

**Complaint to the Ombudsperson of British Columbia  
regarding the conduct of the  
Ministry of Housing and Social Development:  
*Shelter allowance cuts when children are in temporary care  
of the Ministry of Children and Family Development***

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## I. Overview of the complaint

1. Pivot Legal Society (Pivot), and West Coast Women's Legal Education and Action Fund (West Coast LEAF) bring this systemic complaint on behalf of a number of community groups across the province who work with parents who both receive income assistance and have involvement with the child welfare system. The following organizations are participating in this complaint:<sup>1</sup>
  - Atira Women's Resource Society
  - Battered Women's Support Services
  - Downtown Eastside Women's Centre
  - The Kettle Friendship Society
2. This complaint concerns the legislative and policy scheme at the Ministry of Housing and Social Development (MHSD) that requires the reduction of a parent's monthly shelter allowance when their children are in the temporary care of the Ministry of Children and Family Development (MCFD), allowing for a discretionary supplement only for up to three months after the children's removal. The practical effect of this reduction in shelter allowance means that a parent will lose their housing, leaving them homeless or in accommodation that may not be a suitable place to which their child(ren) could be returned from foster care. The reduction in shelter allowance imposes a major obstacle to family reunification, leaving children in the foster care system for longer periods of time.
3. It is our position that any determination by MHSD about whether to reduce the shelter amount of a parent whose children has been apprehended by MCFD should be based upon whether that child is in temporary care or permanent care of MCFD. While a child is in temporary care of MCFD, MCFD's goal is to return the child to the parent. During this time the social workers at MCFD are actively working with the parent to develop a plan for eventual reunification. Therefore, the approach taken by MHSD on this issue is at odds with the legislative objectives and principles set out in the *Child, Family and Community Services Act (CFCSA)*.
4. We argue in this complaint that by reducing the shelter allowance for parents whose children are in temporary care, the MHSD has acted in a way that is administratively unfair, in breach of s. 7 and s. 15 of the *Charter of Rights and Freedoms (Charter)*, and is inconsistent with our government's obligations under domestic and international human rights law. It is our position that the legislative and policy scheme followed by MHSD in determining the shelter allowance for parents whose children are in temporary care of MCFD is unjust, oppressive, improperly discriminatory and contrary to the rule of law. Moreover, we argue that the Temporarily Reduced Family Unit (TRFU) policy at MHSD does not address this issue in a fair way; instead the policy is based upon irrelevant grounds and utilizes an arbitrary, unreasonable and unfair procedure.
5. The kind of unfairness described in this complaint is the very type of unfairness that the Ombudsperson is required to report following an investigation.<sup>2</sup> The organizations participating

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<sup>1</sup> For descriptions of these organizations, please refer to Appendix A.

<sup>2</sup> Section 23(1) of the *Ombudsperson Act*

in the complaint are requesting that the Ombudsperson make a report on this issue and recommend that MHSD amend the *Employment Assistance Regulations (EAR)* (B.C. Reg. 263/2002, as amended) and the *Employment and Assistance for Persons with Disabilities Regulations (EAPDR)* (B.C. Reg. 265/2002, as amended) to ensure that a parent's shelter payment amount is not reduced solely because a child is in temporary care of MCFD.

## II. Facts of the complaint

6. The issue at the centre of this complaint – the ability of parents receiving social assistance to maintain a home for their families after their children have been apprehended temporarily by child welfare authorities – involves the interaction between the income assistance and child welfare systems. Both of these systems impact the lives of marginalized and vulnerable people disproportionately.
7. Thirty five percent of child protection removal court orders between 2003 and 2008 in British Columbia involved families who were receiving income assistance from MHSD.<sup>3</sup> Justice Ted Hughes in his comprehensive review of B.C.'s child welfare system in 2006 noted that there is a significant overlap between parents receiving social assistance and parents whose children are removed from their care:

....most child protection cases arise within families that are materially disadvantaged: almost half either are on income assistance at the time when a child is apprehended, or have recently been.<sup>4</sup>

### i. Income assistance system

8. British Columbia's income assistance regime is described in the *Employment and Assistance Act (EAA)*<sup>5</sup> and the *EAR*. The maximum shelter and support rates for family units who receive income assistance are set out in Schedule A of the *EAR*.
9. Section 4 of Schedule A of the *EAR* sets out the maximum monthly shelter allowance amounts depending on the size of family unit:

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<sup>3</sup> See access request at Appendix B

<sup>4</sup> Hughes, Ted. 2006. *BC Child and Youth Review*. Available at [www.childyouthreview.ca/BC\\_Child\\_and\\_Youth\\_Review\\_Report\\_FINALApril\\_4.pdf](http://www.childyouthreview.ca/BC_Child_and_Youth_Review_Report_FINALApril_4.pdf).

<sup>5</sup> SBC 2002.

<b>Item</b>	<b>Column 1 Family Unit Size</b>	<b>Column 2 Maximum Monthly Shelter</b>
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

11. The term “family unit” is defined in s. 1(1) of the *EAA* as “an applicant or a recipient and his or her dependents.”<sup>6</sup> A “dependent child” is defined in the *EAA* and the *EAR* by reference to where that child resides.<sup>7</sup> Consequently, given that dependent children who have been removed by MCFD are not residing in the home of the parent receiving income assistance, they are not included in the family unit in order to determine the amount of monthly shelter allowance.

12. There is a limited exception to this rule provided for in MHSD's Living Arrangements policy. The Temporary Reduced Family Unit (TRFU) policy states that the shelter allowance for a family may be temporarily maintained at the rate for the full family unit for up to three months when a child is removed by child welfare authorities. The TRFU policy states:

When one or more recipients, including dependent children, leave a family unit, the support and shelter allowances must normally be decreased. The change in support takes effect as soon as the person leaves the home. The shelter allowance may be temporarily maintained at the rate for the full family unit in the following instances.

...

when a child is removed under the Child, Family and Community Service Act (This determination is made on a month-to-month basis for up to three months of shelter allowance.)

12. The TRFU policy also provides for exceptions to the general family unit rule in four other circumstances:

<sup>6</sup> For the purposes of calculating an individual's monthly shelter allowance, family unit also includes a child who is not dependent but resides in the home of the parent not less than 40 percent of each month under a court order or agreement.

<sup>7</sup> Section 1(1) of the *EAA*; Section 1(2) of the *EAR*.

- when there is a death of a member of the recipient's family unit;
- when a member of the recipient's family unit is temporarily hospitalized;
- when a member of the recipient's family unit is in a residential alcohol or drug treatment facility; and
- when a member of the recipient's family unit is out of the province with the approval of the ministry.

The exception to the shelter allowance calculation for children removed under the *Child, Family and Community Services Act* is the only circumstance described in the TRFU policy that requires a monthly assessment for eligibility and is time-limited, providing a financial assistance worker with no discretion to apply the exception after three months.

13. A parent receiving social assistance whose child is in temporary care of the MCFD may experience a reduction of their shelter allowance immediately following the child's removal from the home. The financial assistance worker at MHSD has a month by month discretion to review the file and either maintain the shelter allowance for the full family unit or reduce it. This discretion ends when the child has been out of the home in temporary care of the MCFD for three months. Once the child has been out of the home for three months in temporary care of MCFD, the MHSD no longer has any discretion to maintain the rate of shelter allowance for a full family unit; the shelter amount must be reduced to reflect the number of family members living in the home.
14. Parents are not routinely informed that the MHSD has the discretion to maintain their full shelter amount during the first three months that their children are in the care of the MCFD. Nor are parents routinely informed that they can appeal the decision of the MHSD to not exercise their discretion to maintain their full shelter allowance for three months. The MHSD appears to have no guidelines in place to assist financial assistance workers in exercising this discretion in a fair and consistent fashion.

## ii. Child welfare system

15. The child welfare system in British Columbia is governed by the *Child, Family, and Community Services Act (CFCSA)*. The guiding principles and service delivery principles of the *CFCSA* provide for a family-centred model of child welfare that supports parents, extended family networks and communities to care for children safely while respecting the inherent value of Aboriginal traditions and cultural diversity. Sections 2 and 3 of the *CFCSA* provide as follows:

### Guiding Principles

2 This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;

- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- (d) the child's views should be taken into account when decisions relating to a child are made;
- (e) kinship ties and a child's attachment to the extended family should be preserved if possible;
- (f) the cultural identity of aboriginal children should be preserved;
- (g) decisions relating to children should be made and implemented in a timely manner.

#### Service delivery principles

3 The following principles apply to the provision of services under this Act:

- (a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;
- (b) aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children;
- (c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;
- (d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and Community Living British Columbia established under the Community Living Authority Act;
- (e) the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children.

16. The *CFCSA* also sets out the factors that must be taken into account when determining the best interests of a child in section 4 of the *CFCSA*:

#### Best interests of child

4 (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:

- (a) the child's safety;
- (b) the child's physical and emotional needs and level of development;
- (c) the importance of continuity in the child's care;
- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) the child's cultural, racial, linguistic and religious heritage;
- (f) the child's views;
- (g) the effect on the child if there is delay in making a decision.

(2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.

17. A removal by child welfare authorities does not mean that a child automatically becomes a permanent ward of the state. The Court can make three different types of custody orders when a child is living in foster care: interim custody, temporary custody, and continuing custody. The last type of order, continuing custody, is the only one in which the child is in permanent care of MCFD; both interim and temporary custody orders are limited to a fixed period of time.
18. A continuing custody order refers to an order placing a child in the ongoing care of a Director of Child Welfare. The court will make a continuing custody order if it finds that there is no significant likelihood that the circumstances that led to a child's removal will improve within a reasonable time and/or that the parent will be able to meet a child's needs.
19. The MCFD can apply for a continuing custody order by providing at least 60 days notice to the parties. This order can be applied for where the MCFD believes:
- the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found;
  - a parent is unable or unwilling to resume custody of the child;
  - there is no significant likelihood that the circumstances that led to the child's removal will improve within a reasonable time; OR
  - there is no significant likelihood that the parent will be able to meet the child's needs.
20. Once a continuing custody order has been granted, the child is in permanent care of the MCFD. Under a continuing custody order, the MCFD is the sole guardian and has the ability to consent to the adoption of the child.
21. Unless the MCFD applies for a continuing custody order, there is a presumption that the parent is able and willing to resume custody of the child and that in a reasonable amount of time, the

parent will be able to meet the needs of the child.<sup>8</sup> It follows that where a child is in interim or temporary care of the MCFD and is living outside of their family home, the social worker charged with the file should be working with the parent to assist them in reunifying their family as quickly as possible while ensuring the safety of the child.

22. The *CFCSA* sets out timelines for the period of time a child can remain in temporary care of the MCFD. If a child is under 5 years of age, the maximum amount of time permitted in temporary care is 12 months. If the child is between 5 years of age and 12 years of age, the time in temporary care should not exceed 18 months. If the child is over the age of 12, the period in temporary care should not exceed 24 months. All of these time limits can be extended if the Court determines that it is in the best interest of the child to do so.
23. Delay is a common experience within the child protection system. There are delays in scheduling hearings, meetings with social workers, meetings with a parent's lawyer, and for the commencement of parenting programs or treatment programs. All of these delays contribute to the length of time a child remains in care.
24. There are also many delays inherent in the court process. Child apprehensions are reviewed by the Court during two distinct stages. The first stage, the presentation hearing, is not an inquiry into whether the child is in need of protection; rather it is a review of the reasonableness of the decision for the child to remain in the care of MCFD during the investigation into whether they are in need of protection. At minimum, if the parent is consenting, it will be at least 46 days before the second stage, the protection hearing stage, begins. If a parent is not consenting to the interim order, it is likely to be at least 3 months before the protection hearing stage begins. It is typically much longer given the difficulty with scheduling among the parties and the court, and adjournments due to lack of counsel.
25. The first appearance at the protection stage is not a substantive hearing. Instead the parent will need to indicate whether they are consenting to the order sought by the MCFD, normally a temporary custody order, or whether they will be contesting the order. If they are contesting the order, the matter has to be set down for trial. Prior to a trial date being set, there is a mandatory case conference. The timelines for this case conference again depend on the schedules of the court, the parent, and the lawyer representing MCFD. There are often long delays. After a case conference is heard, a trial date will set.
26. Along the way there may be informal meetings between MCFD and the parent, family group conferences as well as mediation. The MCFD may decide at any point in the process that they believe the child is no longer in need of protection and apply to have the child returned to the parent.
27. Three months is not a significant time period in the framework of the *CFCSA*. Nothing in particular is resolved at the three month stage. In fact, three months is most often an insufficient period of time in which to resolve a child protection matter involving children who have been temporarily apprehended from their parent's care. Between January 2003 and December 2008, only 22 percent of children were returned to their parent or guardian within three months of

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<sup>8</sup> See section 49(4) and (5) of the *CFCSA*



being removed.<sup>9</sup>

28. The child welfare system differentially impacts women. In 2005, female-headed lone-parent families compose 21% of all families with children in BC, and 28% of lone-parent mothers in Canada had incomes which fell below the after-tax Low Income Cut-offs (poverty line)<sup>10</sup>. In 2003, 43% of all children in a low-income family were living with a single female parent, while female-headed long-parent families only accounted for 13% of all children under 18<sup>11</sup>. In many types of families, women remain primarily responsible for the care of children<sup>12</sup>. The disproportionate impact of the child protection system on women is explained by Supreme Court of Canada Justice L'Heureux-Dube in *New Brunswick (Minister of Health and Community Services) v G(J)*<sup>13</sup>:

This case raises issues of gender equality because women, and especially single mothers, are disproportionately and particularly affected by child protection proceedings: see, for example, M. Callahan, "Feminist Approaches: Women Recreate Child Welfare", in B. Wharf, ed., *Rethinking Child Welfare in Canada* (1993), 172. The fact that this appeal relates to legal representation in the family context for those whose economic circumstances are such that they are unable to afford such representation is significant. As I wrote in *Moge v. Moge*, [1992] 3 S.C.R. 813, at p. 853, "In Canada, the feminization of poverty is an entrenched social phenomenon." The patterns of relationships within marriage disproportionately lead to women taking responsibility for child care, foregoing economic opportunities in the workforce, and suffering economic deprivation as a result: *Moge*, supra, at p. 861. Issues involving parents who are poor necessarily disproportionately affect women and therefore raise equality concerns and the need to consider women's perspectives.

29. The child welfare system differentially impacts Aboriginal children in British Columbia. Aboriginal children in B.C. are nearly ten times more likely than their non-Aboriginal counterparts to be taken into MCFD care.<sup>14</sup> As of November of 2006, half of the 9271 children in care in B.C. were Aboriginal. While only one percent of the child population in B.C. is in care overall, 5.4 percent of the Aboriginal child population is in care. Trends are even worse for Aboriginal children living in the Vancouver Coastal Region, which has the smallest proportion of Aboriginal children in any region in the province but has the highest rate of Aboriginal children in care.<sup>15</sup>

### iii. Impact of the shelter allowance reduction on families with children in temporary care

30. The loss of a family's housing upon temporary removal of their children creates a number of barriers for parents to have their children returned to their care. The reduction in shelter

<sup>9</sup> See access request at Appendix B

<sup>10</sup> Statistics Canada. *Women in Canada: A Gender-based Statistical Report*, 5<sup>th</sup> ed. Minister of Industry, Canada, 2006 at pp.38 and 144.

<sup>11</sup> *Ibid.* at 144.

<sup>12</sup> For example, employed women are far more likely than their male counterparts to lose time from their jobs because of personal or family responsibilities. *Ibid.* at 109.

<sup>13</sup> *New Brunswick (Minister of Health and Community Services) v G(J)*, 1999 3 S.C.R. 46 at para.113

<sup>14</sup> MCFD (December 2006) "November 2006 report: Children in Care – Trends and Indicators

<sup>15</sup> MCFD "Children in Care – Trends and Indicators" (November 2006) draft report

allowance may force a parent to move into housing that is unsuitable for children or may render a parent homeless. In these circumstances, the MCFD will not be able to arrange for visits at the parent's residence. This would make the progressive steps leading to a return of their child, such as overnights or weekend visits, impossible. It would also make it unlikely that the return of the child would be considered to be in the child's best interest.

31. The problem outlined in this complaint is a longstanding one. In April of 1992, the British Columbia Civil Liberties Association (BCCLA) addressed the issue of shelter reductions following an apprehension and the barrier it creates for family reunification. Their brief was specifically targeted to proposed changes to the child welfare system that were occurring at that time. Even though this brief was written 17 years ago, the recommendation made by BCCLA still holds true today:

The BCCLA recommends that families continue to receive benefits where their removal would jeopardize reunion. For example, protection workers should be encouraged to approach B.C. Housing and financial assistance workers so that families on social assistance whose child had been temporarily apprehended do not lose the child's shelter allowance and family social housing. **When these are lost, the possibility of successfully reuniting the family is greatly decreased.**<sup>16</sup> [emphasis added]

32. By not including children who are in temporary care of the MCFD in their assessment of the eligible family unit, the MHSD significantly reduces a parent's assistance benefit that is designated to meet their shelter costs. In the case of a single employable parent with one child, their shelter allowance would be reduced by \$195 per month when their child is in temporary care of the MCFD. This is a 34 percent reduction in the amount of money that the parent has to pay their rent.
33. The drastic reduction in their shelter amount forces parents with children in temporary care to lose their housing. It is difficult for a parent to find accommodation for themselves and/or their child for \$375 a month, particularly in Vancouver. In October 2009, the average rental apartment vacancy rate in BC was 3.6% in BC. The vacancy rate for urban centres such as Vancouver, however, was lower - at 2.8% in October, 2009. The average rent for a two bedroom apartment across BC was \$1,001 in October 2009, significantly higher than the shelter amount provided to income assistance recipients without children.<sup>17</sup> The average rent for a two bedroom apartment in Vancouver was \$1,169 in October, 2009.<sup>18</sup> As a result of this policy, the parent will either end up homeless or in accommodation that would be unsuitable for their child.
34. A social worker who was interviewed as part of a study on the experiences of low-income mothers with the child welfare system, specifically addressed this problem as a barrier to family reunification:

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<sup>16</sup> Online at <http://www.bccla.org/positions/admin/92familychild.html>

<sup>17</sup> Canada Mortgage and Housing Corporation, Rental Market Report: British Columbia Highlights, Fall 2009, online at <https://www03.cmhcschl.gc.ca/catalog/productList.cfm?cat=118&lang=en&sid=4406e03059af4b488351f4aa04c4a656&fr=1271362841427>

<sup>18</sup> Table 13 in CMHC Rental Market Statistics, Fall, 2009, Online at <https://www03.cmhcschl.gc.ca/catalog/productDetail.cfm?lang=en&cat=124&itm=1&sid=616adb1f00db4889ac13a87beabf0262&fr=1273595150750>

As soon as a child comes into care, if mom is on social assistance, well, suddenly she's not getting any extra money. So she has to move, she's got maybe \$350 now to rent a place. Well how's she gonna live now? The system is not going to let me send a kid to visit an SRO (Single Room Occupancy Hotel). Parents who want to visit at the [names a hotel in the DTES] I can't possibly allow that kind of stuff to happen... it shouldn't have to be, or everyone crammed into one bedroom, so if the province we/are able to subsidize housing or whatever the solution is and I had a period of time to work with then I could make a real, proper decision.<sup>19</sup>

35. The loss of one's family housing, and therefore family home, has a psychological impact on parents and may make it difficult for the parent to continue to engage with the services that they were seeking in addressing the original reason for the apprehension. For example, a parent with an addiction problem may be at significantly more risk of becoming re-involved in drug use while living on the street. A parent will have more difficulty engaging with the workforce without access to a shower and a place to store work appropriate clothing. The role of housing in healthy families is not limited to the practical benefits of shelter – rather, there are strong psychological and community benefits for parents and children in the development and maintenance of a family home.
36. Even if the parent has progressed on the issue that prompted the removal, the lack of appropriate housing may mean that a child could not be returned to their care. The Representative for Children and Youth identified this problem in a recent report. In *Housing, Help and Hope: A Better Path for Struggling Families*, she finds:

The Representative believes it is unacceptable that a baby in British Columbia is separated from his parents largely because they are unable to immediately create a living situation that they could not reasonably be expected to achieve in the normal course of events, especially without practical assistance or support to navigate complex systems. This places the basic human rights of children in jeopardy and tears families apart in a tragic way, especially Aboriginal families trying to recover and rebuild while grappling with profound historic and ongoing barriers.<sup>20</sup>

Virtually all front-line service providers told RCY investigators that it would be impossible to find suitable accommodation off-reserve in their community for the amount eventually provided by the income assistance shelter allowance. In fact, the general view was that there was a gap of \$200-\$400 per month between shelter assistance funds, and what it would cost to rent appropriate accommodation in the nearby community.

37. The UN Committee on Economic, Social and Cultural Rights in their 2006 Concluding Observations on Canada, commented that they too were concerned with children being in the

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<sup>19</sup> D. Bennett et al. *Broken Promises: Parents Speak About BC's Child Welfare System* at p. 96

<sup>20</sup> Representative for Children and Youth, *Housing, Help and Hope: A Better Path for Struggling Families*, p. 41

foster care system due to inadequate housing:

...low income families, single-mother-led families and Aboriginal and African-Canadian families, are over-represented in families whose children are relinquished to foster care. The Committee is also concerned that women continue to be forced to relinquish their children into foster care because of inadequate housing.<sup>21</sup>

38. The consequences of this reduction in shelter allowance are very significant for these parents. It results in children staying in foster care for a longer period of time. It could even result in a parent losing custody of their child permanently. This unnecessary extended involvement of the child protection system in families that would otherwise be reunited has significant individual, social and financial costs.
39. The negative impact of the foster care system for the education and health of children and youth has been widely documented. In B.C. more than half of children in care are not school ready upon entering kindergarten. An estimated 21 percent of children in care graduate from high school compared with 78 percent of the general population. Moreover only seven percent of children in care graduate from the academic stream that would allow them to go on to university.<sup>22</sup> Growing up in the foster care system is also linked to the likelihood that a youth will become involved in the criminal justice system, with 41 percent of children and youth in care becoming involved with the justice system by the age of 21 in contrast to 6.6 percent of the general population.<sup>23</sup>

#### **iv. Steps we have taken to address the issue with MHSD**

40. We have taken multiple steps to address this issue with MHSD directly. None of these steps have proven to be successful.
41. On February 7, 2008 a group of lawyers and advocates, including representatives from BC PIAC, West Coast LEAF, and Pivot Legal Society, met with representatives from MHSD to discuss a number of concerns raised by families involved in the child welfare system. One of the concerns raised at that time was the reduction of shelter and support payments to parents whose children are in temporary care of MCFD. As a follow-up to the meeting, we drafted a letter setting out our concerns.<sup>24</sup> We received no response to this letter.
42. On January 15, 2009, we wrote another letter to MHSD.<sup>25</sup> This letter was addressed to Michael Turanski, the Director of the Legislation and Legal Services Branch. In this letter, we requested that changes be made to the *EAR* and *EAPDR* to ensure that shelter and support payment amounts are not lowered when a child is in temporary care of MCFD.
43. On February 16, 2009, we received a response from Robert Bruce, the executive director of the

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<sup>21</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C.12/CAN/CO/5/ (2006)

<sup>22</sup> BC Ministry of Health, Office of the Provincial Health Officer (2006) *Joint Special Report on the Health and Well-being of Children in Care*, Online at [www.health.gov.bc.ca/pho/pdf/cyo/complete\\_joint\\_report.pdf](http://www.health.gov.bc.ca/pho/pdf/cyo/complete_joint_report.pdf)

<sup>23</sup> Representative for Children and Youth, *Kids, Crime and Care: Youth Justice Experiences and Outcomes*, p. 35

<sup>24</sup> See initial letter to MHSD at Appendix C

<sup>25</sup> See follow-up letter to MHSD at Appendix C

Strategic Policy and Research Branch at MHSD.<sup>26</sup> His response indicated that the MHSD was conducting research into this matter and would work collaboratively with MCFD to propose a solution that would address our concerns. We were informed that our recommendations would be kept under advisement. We have not heard anything further from MHSD about our concerns, nor has there been any policy or legislative change addressing this concern.

### III. Issues

44. The issue in this complaint concerns the legislative and policy scheme at MHSD that provides for shelter reductions where a parent's children are in temporary care of MCFD. The questions at the centre of this complaint are whether this scheme is:

- a) administratively unfair;
- b) unjust, oppressive and improperly discriminatory; and/or
- c) contrary to law.

### IV. Discussion

#### i. The Ombudsperson has jurisdiction to consider the complaint

45. The Ministry of Housing and Social Development is a government ministry and therefore defined as an "authority" that can be subject to review by the Ombudsperson as set out in s. (1) and 35(1) of the *Ombudsperson Act*. The subject matter of this complaint relates to the legislation, policy, and practices at the MHSD, all of which are matters that properly fall within the jurisdiction of the Ombudsperson pursuant to s. 11 of the *Ombudsperson Act*.

#### ii. The nature of the complaint is systemic

46. Section 12 (1) of the *Ombudsperson Act* provides that a complaint to the Ombudsperson can be made by a person or a group of persons. We are asking the Ombudsperson to consider this complaint on behalf of a group of complainants primarily due to the systemic nature of the complaint.

47. An individual set of facts is not required to assess the unfairness of this legislative and policy scheme at MHSD. This complaint relates to the reduction of a parent's income for shelter when their children are in temporary care of the MCFD. Given the low rates of the shelter allowance and the costs of family housing, a reduction in a parent's shelter allowance will necessarily have an impact on whether they are able to maintain their housing or are able to find other housing that would be appropriate for their child(ren)'s return or for visitation. As noted above, the reduction in shelter allowance imposes a major obstacle to family reunification, leaving children in the foster care system for longer periods of time. The legislative and policy scheme at the heart of this complaint is one that on its face works unfairness for the most vulnerable in our society – low-income mothers and their children.

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<sup>26</sup> See MHSD response at Appendix C

48. Low-income mothers who have child welfare involvement are a vulnerable group that face many barriers, particularly because of the disproportionate representation of Aboriginal women within this group. It is our position that the Ombudsperson should not wait until an individual complainant comes forward. The issue clearly identified in this complaint is a serious systemic one that is creating long-lasting severe harm to the most disadvantaged families in BC right now.

**iii. The shelter reduction is contrary to law**

49. Section 23(1) of the Ombudsperson Act describes the kinds of unfairness that the Ombudsperson must report on if she discovers them in the administration of public authorities. The breaches of fairness set out in s. 23(1) are rooted in the positive legal rights of individuals. That is, pursuant to the common law and the Constitution of Canada, individuals have the right to be treated fairly by public authorities, and public authorities have a duty to make decisions according to fair and consistent procedures, with due consideration to the best interests of the children involved. These principles are further supported by Canada's commitments to international law.

50. In this section, we describe some of the key legal principles that help define the rights of individuals in relation to the reduction of shelter allowance described above. These principles are valuable to the Ombudsperson's investigation of our complaint for four reasons.

51. Firstly, the best interest of the child is a fundamental guiding principle of both domestic and international law. The best interest of the child requires that the state facilitate, where appropriate, the ability of the parent to care for his or her child to the greatest extent possible. The removal of shelter allowance in the circumstances described is an infringement of the state's duty in this regard.

52. Secondly, the Constitution mandates a high standard of procedural fairness where fundamental rights and interests are at stake. The denial of the bond between parent and child has potentially devastating effects on both parent and child, and therefore child protection proceedings require a high degree of procedural fairness. This further supports the Ombudsperson's jurisdiction to ensure that the process and decision making regarding shelter allowances, and their potential impact on child protection matters, promotes procedural and substantive fairness.

53. Thirdly, the rule of law is a fundamental constitutional principle, and it requires that law is both internally and relationally consistent. Where ministerial actions are at cross purposes, such as the actions of MHSD and MCFD in certain circumstances, the rule of law is threatened.

54. Finally, the common law, the Charter and international human rights norms confirm that everyone is equal before and under the law, and that the equality rights of individuals must be understood in a contextual manner. Here, the fact that individuals are marginalized, living in poverty and disproportionately female and Aboriginal, is highly relevant to understanding the scope and meaning of their legal rights.

**a. Best interest of the child is fundamental legal principle**

55. The *Convention of the Rights of the Child (CRC)* requires that the best interest of the child shall

be a primary consideration in all actions concerning children, including those undertaken by social welfare institutions and legislative bodies.<sup>27</sup> The Convention goes on to say that a child has a right to be cared for by his or her parents as far as is possible,<sup>28</sup> and that state parties shall render appropriate assistance to parents in their parenting duties in order to ensure family unity as much as possible,<sup>29</sup> including through the provision of housing.<sup>30</sup> The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* also requires states to provide the widest possible protection and assistance to the family, as the natural and fundamental unit of society.<sup>31</sup>

56. While Canada has ratified both the *CRC* and the *ICESCR*, these Conventions are not yet binding law in Canada. However in *Baker v. Canada (Minister of Citizenship and Immigration)*,<sup>32</sup> the Supreme Court of Canada emphasized that international law, such as contained in the *CRC*, has an important role in aiding the interpretation of domestic law, including the evaluation of what constitutes procedural fairness in an administrative law process.
57. The international emphasis on the best interest of the child and the importance of a child's family in his or her upbringing bolsters the legislative mandate in the *Child, Family and Community Service Act*. While this Act is not directly applicable to the actions of MHSD, the guiding principles in the Act are indicative of the priorities of the state in administering child protection services. The Act notes that the law must be administered in a manner that prioritizes the safety and well-being of children as paramount considerations, in accordance with the principles that the family is the preferred environment for the care and upbringing of children, and support services for the family should be provided where appropriate.<sup>33</sup>
58. Both international and domestic law privilege the best interests of the child in all decision making impacting children, and also note that children's interests will be best served by being cared for by their parents where their parents are able to do so with appropriate supports. In the context of the shelter allowance reduction at issue in this complaint, this means that the state should refrain from reducing a parent's shelter allowance where to do so will interfere in the family's reasonable possibility of reunification.

***b. High standard of procedural fairness required where important interests are at stake***

59. In *Baker*, the Supreme Court of Canada summarized the law on the duty to be fair. The Court describes some of the factors that influence the content of an authority's duty of fairness, including:
- (a) the nature of the decision and the process followed in making it;
  - (b) the nature of the statutory scheme;

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<sup>27</sup> *Convention on the Rights of the Child (CRC)*, Art.3

<sup>28</sup> *CRC*, Art.7

<sup>29</sup> *CRC*, Art.18

<sup>30</sup> *CRC*, Art.27(3)

<sup>31</sup> *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Art. 10(1).

<sup>32</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 [*Baker*], online: <http://www.canlii.org/ca/cas/scc/1999/1999scc41.html>.

<sup>33</sup> *Child, Family and Community Service Act*, [RSBC 1996], c.46 at s.2.

- (c) the importance of the decision to the individual affected;
- (d) the legitimate expectations of the person challenging the decision; and
- (e) the choices of procedure made by the tribunal itself.

60. While each case must be considered individually, the third factor listed above has particular salience for this complaint. As stated by the court in *Baker*, “the more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated.”<sup>34</sup>

61. In the circumstances described in this complaint, the interests at stake (the child’s interest in being raised by his or her parents and the parents’ interest in parenting) are in fact fundamental to both the parents’ and the child’s rights to security of the person, as protected by s.7 of the Charter. Section 7 provides that:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.<sup>35</sup>

62. In the case of *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, the Supreme Court of Canada commented on the importance of the interests at stake in child protection proceedings, and how such interests fit within the purview of s.7 of the Charter:

The parental interest in raising and caring for a child is, as La Forest J. held in *B. (R.)*, supra, at para. 83, “an individual interest of fundamental importance in our society”. [...] As an individual’s status as a parent is often fundamental to personal identity, the stigma and distress resulting from a loss of parental status is a particularly serious consequence of the state’s conduct [...] The interests at stake in the custody hearing are unquestionably of the highest order. Few state actions can have a more profound effect on the lives of both parent and child. Not only is the parent’s right to security of the person at stake, the child’s is as well. Since the best interests of the child are presumed to lie with the parent, the child’s psychological integrity and well-being may be seriously affected by the interference with the parent-child relationship.<sup>36</sup>

63. Moreover, the potential loss of housing through a reduction in shelter allowance in these circumstances may infringe both the parent’s and the child’s progressively realizable right to adequate housing, as protected at international law. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will

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<sup>34</sup> *Baker*, supra note 59 at para. 25.

<sup>35</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

<sup>36</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 [*G.(J.)*] at paras. 61 and 76.



take appropriate steps to ensure the realization of this right....<sup>37</sup>

64. Due to the fundamental importance of the interests at stake, the state is subject to a high degree of procedural fairness in ensuring that a parent is only relieved of custody over her child where such severing of the parent child bond is in the best of the interests of the child.<sup>38</sup> Where the state has interfered with the parent's ability to provide adequate housing for her child in circumstances in which there is a reasonable possibility of family reunification, the state action is unfair and contrary to law.
65. The facts of this complaint fall within the types of administrative unfairness described in the *Ombudsperson Act*. The legislative and policy framework at MHSD that cuts off shelter allowance for parents whose children are in temporary care of the MCFD is both unjust and oppressive (s. 23(1)(a)(iii)) and relates to a procedure that is arbitrary, unreasonable, unfair (s. 23(1)(a)(v)) and based upon an irrelevant ground of consideration (s. 23(1)(a)(iv)).
66. It is substantively unjust that a parent can lose their housing immediately after their child is removed from their care by MCFD. The parent in this situation may be contesting the allegations made by MCFD against them. Before they even have an opportunity to present their case, they have lost their housing, creating a further issue to resolve before their family can be reunited. In other cases, the parent may agree that their child has to be out of their care temporarily while they obtain support to work on the issues identified by MCFD as placing their child in need of protection. MHSD's legislation and policy make it so that even when this parent has satisfied MCFD that those particular issues are no longer a concern, the new problem of lack of suitable housing has arisen.
67. Housing is a central component of a family's well-being. This is recognized repeatedly throughout provincial law and policy. The effect of the legislative and policy framework at MHSD that forces a parent to lose their family home precisely when they are trying to reunify their family is unreasonably harsh and cruel. Displacing a family from its home is an unduly harmful response to involvement with child protection system. It is not a response that accords with BC's child welfare legislation, which aims to reunite a family as quickly as possible.
68. MHSD's policy that allows for a discretionary supplement for up to three months after a child's removal is not an adequate response to these concerns. The policy provides the financial assistance worker with the discretion to extend a parent's full shelter allowance for a period of three months, and this discretion is to be reviewed on a monthly basis. Child removals by MCFD are the only circumstance of the five instances described in MHSD's TRFU policy where a time limit is imposed to restrict the discretion to extend the benefit. There is no reason to treat child welfare removal cases any differently than other situations where a family unit is temporarily reduced. Child welfare removal cases are also the only circumstances where discretion is required to be exercised on a month to month basis.
69. MHSD has no guidelines in place to exercise this discretion. It is not apparent why a particular parent would have their shelter allowance extended for three months and why another would

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<sup>37</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966 (entry into force 3 January 1976), online: [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm).

<sup>38</sup> *G.(J.)* at 70.

have it cut off immediately following removal. It is also unclear whether this policy is automatically considered in all child welfare removal cases and how parents are notified of this possible benefit. It is also unclear whether parents are notified of their ability to appeal the decision to not maintain their full shelter amount.

70. The policy itself is based upon a time period which is an irrelevant ground of consideration, making it an arbitrary and unreasonable one. Three months is not a significant time period in child welfare legislation, nor is it significant in terms of the practical reality of how long children remain in temporary care. There is no basis for MHSD to select three months as the time period that discretion ends in these cases.

***c. Equality requires a contextual analysis of identity and discrimination***

71. Individuals in receipt of social assistance and individuals involved in the child protection system are protected from discrimination by section 15(1) of the *Charter of Rights and Freedoms*, which provides:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

72. British Columbia's human rights legislation also prohibits discrimination in the provision of services on the basis of particular prohibited grounds, such as disability, sex, race, and family status. Neither the Charter nor B.C.'s *Human Rights Code* identifies receipt of social assistance to be a prohibited ground of discrimination. However, given that Aboriginal people, single women, and people living with a disability are disproportionately represented among those impacted by the legislation and policy scheme in question, the measures in place arguably are in violation of the *Human Rights Code* and the *Charter* and therefore contrary to law.
73. Section 23(1)(a)(iii) of the *Ombudsperson Act* provides that where improper discrimination is found by the Ombudsperson, a report must be made.
74. Our domestic guarantees of equality before and under the law, and prohibitions against discrimination based on sex and race, are bolstered by international law.<sup>39</sup> At international law, like Canadian constitutional law, equality means substantive equality, as explained by the *Committee on the Elimination of Discrimination Against Women*:

[T]he Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men [...] Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women. The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and

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<sup>39</sup> See, for example, CEDAW, Art.1; ICESCR, Arts.2 and 3; CERD, Art.2(1).

measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns. [Emphasis added]<sup>40</sup>

75. The prohibition on discrimination extends beyond the realm of formal equality to prevent laws and government actions from having a disproportionately disadvantageous impact on women, and particularly Aboriginal women. A policy that impedes the ability of social assistance recipients, who are disproportionately female and Aboriginal, to be reunited with their children in appropriate circumstances is discriminatory and therefore contrary to constitutional and international law principles of equality.
76. In the case *Falkiner v. Ontario (Minister of Community and Social Services)*<sup>41</sup>, the Ontario Court of Appeal held that the findings before the court “support the conclusion that recognizing receipt of social assistance as an analogous ground of discrimination under s. 15(1) would further the protection of human dignity.”<sup>42</sup> The Court cited many reasons for this, including the following:

There is significant evidence of historical disadvantage of and continuing prejudice against social assistance recipients, particularly sole-support mothers.<sup>43</sup>

77. Economic disadvantage often co-exists with other forms of disadvantage. The economic disadvantage suffered by social assistance recipients is only one feature of, and may in part result from, their historical disadvantage and vulnerability.<sup>44</sup>
78. The Ontario Court of Appeal’s statements about people who receive income assistance provide important insight into the way governments should approach the legal rights of those individuals. To the extent that the practices we describe in this complaint discriminate against individuals who receive social assistance, they are not only unfair but also violate the *Charter*. The Ministry must ensure that its policies and practices work towards ending discrimination, marginalization and stigmatization of people on welfare, and that it does not disproportionately interfere with the rights of parents and children living in poverty to family reunification.

**d. The rule of law requires consistency**

79. The rule of law entails that statutes must be drafted, interpreted and applied in a manner that is consistent between statutes.
80. The rule of law is a foundational constitutional principle, which is both explicitly recognized in the preamble to the *Constitution Act, 1982* and “implicit in the very concept of a constitution”.<sup>45</sup> One of the tenets of the rule of law is an ordered society, as explained by the Supreme Court of

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<sup>40</sup> CEDAW Committee, *General recommendation No. 25 – thirtieth session, 2004 article 4 paragraph 1 - Temporary special measures* at paras.8 and 10.

<sup>41</sup> *Falkiner v. Ontario (Director, Income Maintenance Branch, Ministry of Community and Social Services)*, 212 D.L.R. (4th) 633, online: CanLII: <http://www.canlii.org/on/cas/onca/2002/2002onca10233.html>.

<sup>42</sup> *Falkiner*, *supra* note 64 at para. 87.

<sup>43</sup> *Falkiner*, *supra* note 64 at para. 86.

<sup>44</sup> *Falkiner*, *supra* note 64 at para. 88.

<sup>45</sup> *British Columbia (Attorney General) v. Christie*, [2007] 1 S.C.R. 873 at para.19.

Canada in *Reference re: Manitoba Language Rights*:

...[T]he rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. Law and order are indispensable elements of civilized life.<sup>46</sup>

81. An ordered society requires internal consistency. In order to promote the rule of law, then, it is essential that laws and government actions do not contradict each other or work at cross purposes.
82. Where a parent's shelter allowance is reduced when her children are in the temporary care of the Ministry, as described above, MHSD and MCFD are working at cross purposes. While MCFD is working to reunite families, as per its legislative mandate, MHSD is interfering in a parent's ability to sustain or obtain adequate housing for their children, and is therefore interfering in the reunification of families. The rule of law requires that MHSD, while not technically bound by the *CFCSA*, not contradict the mandate of MCFD to work towards family reunification of families wherever possible with appropriate supports.

**V. Remedy**


83. As noted above, the kind of unfairness described in this complaint is the very type of unfairness that the Ombudsperson is required to report following an investigation.<sup>47</sup> As such, the complainants request that the Ombudsperson make a report on this issue and recommend that MHSD amend the *Employment Assistance Regulations (EAR)* (B.C. Reg. 263/2002, as amended) and the *Employment and Assistance for Persons with Disabilities Regulations (EAPDR)* (B.C. Reg. 265/2002, as amended) to ensure that a parent's shelter payment amount is not reduced while a child is in the temporary care of MCFD.
84. It is our position that any time period chosen by the MHSD to limit their discretion to maintain a parent's full shelter amount where a child is in temporary care of the MCFD will be an arbitrary one. We request that the Ombudsperson's recommendations reflect that whether the child is in temporary care or continuing care (i.e. permanent care) of the MCFD is the only appropriate indicator to determine the shelter allowance for parents whose children are in MCFD care.

**Respectfully submitted this 12<sup>th</sup> day of May, 2010.**

**PIVOT LEGAL SOCIETY**

**AND**

**WEST COAST LEAF WOMEN'S LEGAL  
EDUCATION AND ACTION FUND**



Lobat Sadrehashemi  
Staff Lawyer



Kasari Govender  
Legal Director

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<sup>46</sup> *Reference re: Manitoba Language Rights (Man.)*, [1985] 1 S.C.R. 721 at para.60.

<sup>47</sup> Section 23(1) of the *Ombudsperson Act*

## **Appendix A**

### **Description of Complainants**

## **Appendix A – Description of Complainants**

**Atira Women’s Resource Society** (Atira) is a community-based organization that supports all women, and their children, who are experiencing the impact of violence committed against them and/or their children. Atira runs transitional housing and emergency shelter programs for women and their children.

**Battered Women Support Services** (BWSS) provides support and advocacy for women who have experienced abuse, as well as training and education about violence against women. BWSS provides crisis support, counselling, victim services, and legal advocacy.

**Downtown Eastside Women's Centre** (The Centre) provides shelter and basic necessities to women and children experiencing crisis. The Centre runs a drop in program that provides counselling, advocacy, social, educational, and referral services, as well as an emergency shelter for women.

**Kettle Friendship Society** (The Society) serves individuals with a mental health disability, and offers referral, advocacy, and outreach services for mental health issues, income, housing, and family law. The Society runs numerous housing programs, including housing for women who have experienced violence. The Society also runs a drop-in centre and social lounge, a health clinic and employment programs.

## **Appendix B**

### **Access Requests from MHSD and MCFD**



RECEIVED

AUG 6 2009

July 31, 2009

Sarah Khan  
BC Public Interest Advocacy Group  
208-1090 West Pender St  
Vancouver, BC V6E 2N7

Dear Sarah Khan:

**RE: Freedom of Information and Protection of Privacy Act  
Request for Access to Information #2009-00707**

The Information Access team of the Ministry of Children and Family Development received your request for information under the *Freedom of Information and Protection of Privacy Act* (the FOIPPA) on May 19, 2009. Your request was for:

1. *The number of children between 2003 and 2008 who have been apprehended by the ministry of Children and Family Development ("MCFD") and who are returned to their parents or guardians within 3 months of being apprehended; and*
2. *The number of parents or guardians who were receiving income assistance from the Ministry of Housing and Social Development whose children were apprehended by MCFD between 2003-2008*

We are enclosing copies of the records you requested. These are released to you in their entirety, no severing was required.

Under section 52 of the FOIPPA, you may ask the Information and Privacy Commissioner to review any matter concerning the Ministry's response to your request. You have 30 business days from the receipt of this notice to request a review by writing to:

Information and Privacy Commissioner  
PO Box 9038 Stn Prov Gov't  
Victoria BC V8W 9A4  
Phone (250) 387-5629 Fax (250) 387-1696

If you wish to request a review, please provide the Commissioner's Office with the reasons or grounds upon which you are requesting the review; a copy of this letter; and, a copy of your original request. Failure to request a review, in writing, within the 30-business day time limit will result in your right to request a review being lost, unless the Commissioner deems otherwise.

/2

Ministry of  
Children and  
Family Development

Access and Privacy  
Operations

Mailing Address:  
PO Box 9702 Stn Prov Govt  
Victoria BC V8W 9S1

Location Address:  
5<sup>th</sup> floor, 716 Courtney Street  
Victoria BC

Telephone: (250) 387-0820  
Facsimile: (250) 387-0817



If you have any questions, please contact me directly. To call toll-free from Victoria dial 250-356-9333; from Vancouver dial 604-660-2421 and from elsewhere in BC dial 1-800-663-7867 and ask to be transferred to 250-356-9333. Out-of-province callers will need to dial long distance 250-356-9333.

Regards,

A handwritten signature in cursive script that reads "Wendy Armstrong". The signature is fluid and extends across the width of the page.

Wendy Armstrong, Senior Advisor

- *The number of children between 2003 and 2008 who have been apprehended by the ministry of Children and Family Development ("MCFD") and who are returned to their parents or guardians within 3 months of being apprehended; and*

**Response:**

Between January 2003 and December 2008, there were a total of 18,772 removal court orders. As sometimes a child ends up with multiple court orders for removal within a month, the number of children removed in a month is lower than the number of court orders. Counting each child only once per month, a total of 18,695 children were removed between 2003 and 2008. Children who were removed, then discharged from care, and then removed again in a different month were counted multiple times

The data used in this analysis is from month-end extracts of the Management Information System - Social Work System (MIS/SWS). Of the 18,695 children (database records), 3,501 records were removed from this analysis because of coding issues<sup>1</sup>. The remaining 15,194 (81%) records were used in this analysis. Of the 15,194 children removed between 2003 and 2008, some 4,693 (31%) were discharged from care within three months of being removed. Of the 4,693 children discharged within three months, 3,413 were returned to their parent/guardian. Therefore, 3,413 (22% of 15,194) were returned to their parent/guardian within three months of being removed.

In determining whether a child was returned to their parent/guardian after being removed, the following *close reason codes* from MIS/SWS were used to count the number of children returned to their parents/guardians:

- Child returned to parent;
- Parent able to resume care;
- Care required by child completed;
- Court refused requested order;
- Child AWOL/institution, agreement cancelled;
- Supervision order completed;
- Ward of other province/country returned;
- No service provided.
- File was opened for corrections\*;
- File was opened in error\*;

\* MIS/SWS only stores the most recent close reason code (i.e., any update to the close reason code overwrites any previously recorded close reason code.) The close reason codes used in this analysis are from month-end extracts of MIS/SWS. For example, if a child was returned home early in the month, and then the social worker reopened the file for corrections and closed it again before the end of the month, the closed reason code would be "File was opened for corrections." The data set includes 642 children whose case end within three months of removal and had a close reason code of either *file was opened for corrections* or *file was opened in error*.

1. Coding issues arise from timeliness of data entry: If data entry into MIS/SWS occurs well after a child protection event (e.g., removal or return to parent), then data regarding that particular event may never appear on a month-end extract.

- *The number of parents or guardians who were receiving income assistance from the Ministry of Housing and Social Development whose children were apprehended by MCFD between 2003-2008*

**Response:**

Of the 18,772 removal court orders between 2003 and 2008, some 6,551 (35%) involved *families* who were receiving income assistance from the Ministry of Housing and Social Development (MHSD).

Every court order a child protection worker executes is entered in MIS/SWS. Using month-end extracts from MIS/SWS, the actual children removed can be identified and counted.

MCFD and MHSD share a common client registry. Using extracts from MHSD, actual children in a family receiving Income Assistance were identified by month. Any child that was both removed and in a family on Income Assistance in the same month was counted as a child being removed from a family on Income Assistance.



June 30, 2009

Sarah Kahn  
BC Public Interest Advocacy Centre  
208 - 1090 West Pendar Street  
Vancouver BC V6E 2N7

Your file: 5226

Dear Sarah Kahn:

**RE: REQUEST FOR ACCESS TO RECORDS # 09-00785  
UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

I am responding to your request made under the *Freedom of Information and Protection of Privacy Act* (the Act), dated May 19, 2009, in which you requested the following statistical records:

1. The gender and race/ethnicity breakdown of parents whose income assistance shelter portion has been decreased between 2003 and 2008 due to Ministry of Children and Family Development (MCFD) apprehension of a child in the family;
2. The number of Income Assistance clients between 2003 and 2008 who have received an extension of shelter benefits under each of the five categories listed under MHSD's 'Temporarily Reduced Family Unit' policy... as follows:
  - when there is a death of a member of the recipient's family unit (code 37).
  - when a member of the recipient's family unit is temporarily hospitalized (code 42)
  - when a member of the recipient's family unit is in a residential alcohol or drug treatment facility (code 42).
  - when a member of the recipient's family unit is out of the province with the approval of the ministry (code 42).
  - when a child is removed under the *Child, Family and Community Service Act* (code 46) (This determination is made on a month-to-month basis for up to three months of shelter allowance.)

In response to Part 1 of your request, the Ministry of Housing & Social Development (MHSD) does not collect data on the ethnicity of BCEA clients nor does it collect data that specifically identifies cases where children are apprehended by the Ministry of Children & Families. The ministry does collect the income code 46 (a top up to the shelter allowance that may be granted when a child is apprehended by MCFD but when that top up ends, the reason is not captured in MHSD data. Therefore, from MHSD data alone, we cannot determine when a reduction in shelter is due to an intervention on the part of MCFD.

...../2

In response to Part 2 of your request, the ministry can identify extensions of shelter benefits in two categories: the case of death of a family member (code 37), and when a child is removed by MCFD (code 46). Please refer to the enclosure for year statistics of Code 37 and Code 46 data.

In the remainder of Part 2, you requested data for three categories of families who receive code (42) shelter benefits: when a member of a family is temporarily hospitalized; or in a treatment facility; or out of province. The standard shelter code (42) is used for all 3 of these categories of families, as well as every other family who receives regular shelter benefits. Unfortunately, there is no way to distinguish between those families in the categories you have requested and every other family who receives regular shelter benefits.

If you think your request has not been answered completely, please contact Dave McCallum at the address or telephone number listed at the bottom of the previous page.

Under Section 52 of the Act, you may ask the Information and Privacy Commissioner to review any matter concerning the ministry's response to your request. You have 30 days from receipt of this notice to request a review by writing to the Office of the Information and Privacy Commissioner, PO Box 9038, Victoria, BC V8W 9A4, phone 250 387-5629 or facsimile 250 387-1696.

Sincerely,



Richard Maddia *for*  
Director

Enclosures

**Income Assistance Cases Issued Allowance Codes 37 and/or 46 by Year\***

Year	Code 37	Code 46
2003	58	920
2004	76	723
2005	74	652
2006	72	590
2007	68	517
2008	67	518

\* A case receiving more than one issue of either code per year is counted only once per year.

Source:  
Strategic Policy Research Branch  
Policy and Research Division  
Ministry of Employment and Income Assistance  
ref: \ats\01914  
Created: 09/06/11

**Appendix C**  
**Letters to MHSD on shelter reduction issue and  
MHSD's response to this issue**

# PIVOT LEGAL LLP

BARRISTERS & SOLICITORS

## VIA EMAIL

March 3, 2008

Dana Jensen  
Manager, Health and Families Team  
Social Policy Branch  
Ministry of Employment and Income Assistance  
6th Floor, 614 Humboldt St  
Victoria BC

Dear Dana:

**Re: Follow-up to February meeting with lawyers and advocates working with families involved with the Ministry of Children and Family Development**

Thanks to you and Mike Ross for coming to meet with us on Friday, February 7, 2008. At our meeting, we had the opportunity to discuss three issues: 1) the reduction in shelter and support payments to parents whose children have been apprehended by the Ministry of Children and Family Development ("MCFD"); 2) difficulties in obtaining child tax benefit when a child has been apprehended by MCFD and returned to the family; and 3) the new screening process to determine eligibility for the Child in the Home of a Relative Program ("CIHR").

Concerns and recommendations for the three issues we discussed at the meeting are set out in summary form below. We hope that these recommendations will be considered and would welcome the opportunity to be part of any further discussions on these issues.

**1. Shelter and support payment amounts should not be lowered while the child is in temporary care of the MCFD.**

There is no consistent application of MEIA's current policy with respect to shelter and support rates for parents whose children have been removed by MCFD. In practice, some parents' shelter and support payments are reduced immediately when their children are taken into care. Parents should be aware of MEIA policy and discretion should be exercised in accordance to a set of criteria.

**It is our position that the shelter and support amount for a parent should only be reduced when a continuing custody order has been granted to MCFD and the child is placed in permanent care.**

The current policy of maintaining the shelter allowance for a maximum of three months with monthly reviews makes it difficult and sometimes impossible for parents to have their children returned. Losing the extra amount of support means that parents will lose their housing, leaving them homeless or on \$375 per month, in accommodation that is not appropriate for their children. This creates a very real barrier for parents trying to have their children returned. Social workers are put in a position where even if the parent has progressed on the issue that prompted the removal, the lack of appropriate housing means that children remain in the foster care system.



There are many delays in the child protection system; many of these delays are not attributable to the parent. There are delays in scheduling hearings, meetings with the social worker, meetings with the parent's lawyer, and the commencement of parenting programs or treatment programs. All of these delays contribute to the length of time a child remains in care. It also means that a child may be in care for a long period of time even when there is a real prospect of return to the parent.

A determination by MEIA about whether to reduce the shelter and support amount of a parent whose child has been apprehended should be based upon whether the child is in temporary care or permanent care of MCFD. Any timeline that is selected, whether it is two months or four months, would be arbitrary. When a child is in temporary care, the goal for MCFD is to return the child to their parent. During this period, MEIA should be working with MCFD in order to ensure that families can be reunited to a safe home as quickly as possible. MEIA's current approach is effectively ensuring that reunification becomes impossible for a large number of families.

The presence of a continuing custody order, where the child is placed in the permanent care of MCFD, is the indicator that should be used in determining whether a reduction in shelter and support amount is required.

- 2. The child tax benefit should be reinstated immediately when a child has been returned to their parent; parents should be advised about the 'clawback' if they receive the retroactive payment in one lump sum.**

When a parent's child has been apprehended, their child tax benefit is stopped immediately. Reinstatement of the child tax benefit when a child is returned is a very slow process. It can take three months for the benefit to be reinstated.

When a child is being returned, financial assistance workers are not advising parents that if they receive a retroactive payment in a lump sum, this amount will be "clawbacked" from their welfare cheque. It is extremely problematic that parents are not being advised of this. Some parents are opting to receive a lump payment instead of dividing the payment over several months, without knowing that they will not in fact be able to collect the lump sum when it finally arrives.

**Financial assistance workers must notify parents whose children are being returned that they will not be able to keep the retroactive payment of the child tax benefit if they opt to receive it in a lump sum.**

- 3. Advocates and lawyers for parents should be involved in providing input on how the new screening process for CIHR will impact families, particularly Aboriginal families.**

Effective December 1, 2007 a new screening requirement came into effect due to an amendment to s. 6 of the *Employment and Assistance* regulation. This amendment now requires all relatives and all other persons age 18 years or over living in the relative's home to consent to a screening check by MCFD.

A brief description of the screening process was provided at our meeting. We are concerned that this process will disproportionately impact Aboriginal families who are more likely than any other group to have been involved with MCFD at some point in their lives. There does not appear to be an avenue to effectively appeal the determination that the family presents "risk," making them ineligible for the CIHR supplement.

**MEIA should be seeking input from families, service providers, and child protection lawyers, on how the new screening process for CIHR will impact the ability of families to provide a safe alternative to foster care.**

If you have any questions or would like to discuss these issues further, please do not hesitate to contact any of the parties who were present at the meeting.

Thank you for your attention.

Yours truly,



Lobat Sadrehashemi  
Staff Lawyer  
Pivot Legal Society

# PIVOT

equality lifts everyone

January 15, 2009

Reply to: Lobat Sadrehashemi  
Direct Line: (604) 255 9700 ext. 103  
E-mail: lobat@pivotlegal.com

VIA EMAIL (Michael.Turanski@gov.bc.ca)

Michael Turanski  
Director, Legislation and Legal Services Branch  
Ministry of Housing and Social Development

Dear Mr. Turanski,

**Re: Shelter Allowance Reduction for Families whose Children are in Temporary Care of the Ministry of Children and Family Development**

We would like to take this opportunity to set out once again why it is important that the Ministry of Housing and Social Development ("MHSD") make immediate amendments to the *Employment Assistance Regulations ("EAR")* and the *Employment and Assistance for Persons with Disabilities Regulations ("EAPDR")* to ensure that shelter and support payment amounts are not lowered while a child is in temporary care of the MCFD.

Approximately one year ago, a group of lawyers and advocates who work with families, met with Dana Jensen and Mike Ross, of what was then called the Ministry of Employment and Income Assistance. At our meeting, we had the opportunity to discuss the reduction in shelter and support payments to parents whose children have been apprehended by the Ministry of Children and Family Development ("MCFD"). A follow-up letter was sent in March of 2008 to outline our concerns on this issue and several others that had arisen in the meeting. We have not received a response to our letter.

**It is our position that the shelter and support amount for a parent should only be reduced when a continuing custody order has been granted to MCFD and the child is placed in permanent care. The reasons we are recommending immediate action on this issue are set out below.**

When a child is in MCFD care, MHSD's current policy of maintaining the shelter allowance at the higher rate for a maximum of three months with monthly reviews makes it difficult and sometimes impossible for parents to have their children returned. Losing the extra amount of support means that parents will lose their housing, leaving them homeless or left with only \$375 per month for housing, in accommodation that is not appropriate for their children. This creates a very real barrier for parents trying to have their children returned. Social workers are put in a position where even if the parent has progressed on the issue that prompted the removal, the lack of appropriate housing means that children remain in the foster care system.

There are countless delays in the child protection system; many of these delays are not attributable to the parent. There are delays in scheduling hearings, meetings with the social

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worker, meetings with the parent's lawyer, and the commencement of parenting programs or treatment programs. All of these delays contribute to the length of time a child remains in care. It also means that a child may be in care for a long period of time even when there is a real prospect of return to the parent. Three months is often an insufficient amount of time in which to resolve a child protection matter involving children who have been temporarily apprehended.

A determination by MHSD about whether to reduce the shelter and support amount of a parent whose child has been apprehended should be based upon whether the child is in temporary care or permanent care of MCFD. Any timeline that is selected, whether it is two months or four months, would be arbitrary. When a child is in temporary care, the goal for MCFD is to return the child to their parent. During this period, MHSD should be working with MCFD in order to ensure that families can be reunited to a safe home as quickly as possible. MHSD's current approach is effectively ensuring that reunification becomes impossible for a large number of families. This has a particular impact on women (the majority of single parent families are headed by women) and on the best interests of the child. Children and their parents/mothers are not well served by a system that creates, rather than alleviates, obstacles to healthy reunification.

The presence of a continuing custody order, where the child is placed in the permanent care of MCFD, is the indicator that should be used in determining whether a reduction in the shelter and support amount is required.

We would appreciate a response to our recommendation for amendments to the *EAR and EAPDR* by February 16, 2009.

Thank you for your attention.

Yours truly,

**PIVOT LEGAL SOCIETY**

Per:



**Lobat Sadrehashemi**  
**Staff Lawyer**

**cc: Lesley du Toit, Deputy Minister, Ministry of Children and Family Development, via email at [mcf.deputyministersoffice@gov.bc.ca](mailto:mcf.deputyministersoffice@gov.bc.ca)**

**Sarah Khan, Staff Lawyer, BC Public Interest Advocacy Centre, via email at [skhan@bcpiac.com](mailto:skhan@bcpiac.com)**

**Kasari Govender, Legal Director, West Coast Women's Legal Education and Action Fund (LEAF) via email at [legal@westcoastleaf.org](mailto:legal@westcoastleaf.org)**

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## Lobat Sadrehashemi

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**From:** Bruce, Robert HSD:EX [Robert.Bruce@gov.bc.ca]  
**Sent:** Monday, February 16, 2009 5:17 PM  
**To:** Lobat Sadrehashemi  
**Subject:** MHSD response to Pivot Legal Society: Policy on Support and Shelter Allowances when families have children taken into temporary care by MCFD

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Ms. Sadrehashemi:

Thank you for your letter to the Ministry of Housing and Social Development regarding the ministry's current policy on support and shelter allowances when families have children taken into temporary care by the Ministry of Children and Family Development. As the Executive Director responsible for the Policy and Research Division, I am pleased to respond.

I appreciate you taking the time to share the Pivot Legal Society's position on this matter and for recommending amendments to the Employment and Assistance Regulation and the Employment and Assistance for Persons with Disabilities Regulation.

The ministry is fully committed to policies and programs that will provide assistance to our most vulnerable citizens including children. Accordingly, the ministry recognizes that helping a family to maintain housing is important in cases where a child is taken into temporary care. That is why the ministry will temporarily maintain the shelter rate for 3 months for the full family unit after a child is taken into temporary care by the Ministry of Children and Family Development. The ministry can also provide a crisis supplement to help families cope with unexpected expenses in order to prevent a child removal from happening in the first instance.

When a child is returned to the family, eligibility can be reassessed and additional support and shelter assistance provided. If eligible, a family can receive an increase in support allowance that is prorated based on the number of days remaining in the calendar month. Similarly, shelter allowance can be increased to the maximum rate for the family based on the return of a child.

At this time, the ministry is conducting research on this matter and will be working with the Ministry of Children and Family Development to determine how best to address situations in which there is a plan in place for the return of a child. Through these collaborative efforts, the ministry hopes to propose a solution that is satisfactory to address your concerns and will, most important of all, help children in temporary care be reunited with their families whenever possible.

Going forward in the face of the current economic situation, the ministry is committed to pursuing policies and programs that meet the priorities and needs of our clients at a time when we are experiencing an increased demand for ministry services and assistance. Thus, we will keep your concerns in mind and will take your recommendations under advisement as the ministry moves to address this issue in our continuing commitment to help build - and deliver - the best system of support in Canada for those in need.

Thank you again for writing.

Sincerely,

Rob Bruce  
Executive Director  
Ministry of Housing and Social Development Strategic Policy & Research Branch  
tel: 250-387-1488 fax: 250-387-8164