



A Targeted Internal Review of Sections of the Children and Family Services Act

Final Report and Recommendations

Department of Community Services

March 1, 2021

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Department of Community Services
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Glossary of Terms

The following terms are used throughout this report:

- **Children and Family Services Act (CFSA or act):** the legislation in Nova Scotia that aims to protect children from harm, promote the integrity of the family, and assure the best interests of children.
- **Department of Community Services (department or DCS):** a department in the Government of Nova Scotia under the direction of the Minister of Community Services, that delivers a wide range of social services to Nova Scotians in need. The department includes a number of divisions, sections, and programs including: Children, Youth & Family Supports; Disability Support Program; and Employment Support & Income Assistance.
- **Minister:** means the Minister of the Nova Scotia Department of Community Services. Legislation gives the Minister the ability to delegate certain duties to others as designates. This is the case; for example, as the Minister has designates with respect to Section 63(2) when entering the name of a person in the Child Abuse Register; Section 64(2) when receiving written notice from individuals applying to court to have their name removed from the Child Abuse Register; Sections 66(3) when considering disclosure of information from the Child Abuse Register to outside agencies; and Section 66(4) when releasing information to a person about whether their name is on the Child Abuse Register.
- **Internal Stakeholders:** individuals who provided information for the development of this report and who are representatives of various areas of the Government of Nova Scotia. A list of stakeholder groups engaged is provided in Appendix 1.
- **External Stakeholders:** individuals who provided information for the development of this report, or who provided written submissions for consideration, and who are representatives of various organizations external to the Government of Nova Scotia. A list of stakeholders engaged, and written submissions received, is provided in Appendix 1.

The following abbreviations are used throughout this report:

- **AB:** Alberta
- **BC:** British Columbia
- **MB:** Manitoba
- **NB:** New Brunswick
- **NL:** Newfoundland and Labrador
- **NWT:** Northwest Territories
- **NS:** Nova Scotia
- **NU:** Nunavut
- **ON:** Ontario
- **PEI:** Prince Edward Island
- **QC:** Quebec
- **SK:** Saskatchewan
- **YK:** Yukon

Executive Summary

The Children and Family Services Act (CFSA or act) protects one of Nova Scotia's most vulnerable populations: children who are living in situations of abuse or neglect.

In 2015, the Department of Community Services (DCS or department) put forward amendments aimed at addressing modern practices and family structures. Changes made to the act were proclaimed on March 1, 2017. One of the amended areas of the legislation was Section 88(A), which requires a formal review of selected provisions identified within the act every four years.

The department was in the initial stages of planning for the review when the province had to respond to the first wave of the COVID-19 pandemic. Responding to the fluid changes required during this pandemic has been challenging. In undertaking the CFSA review, the department identified specific areas where a review would be valuable and could be accomplished with targeted stakeholder engagement to produce recommendations within the mandated timeline.

Therefore, a targeted internal review was undertaken with the understanding there would be future reviews to explore additional areas of the act that could include broader and more comprehensive stakeholder engagements.

This targeted review focuses on whether specific sections of the act under review are meeting intended objectives. A Review Committee was established that consisted of staff representing the Department of Community Services, Mi'kmaq Family and Children's Services (MFCS), and the Department of Justice. The committee's work was informed by key input from stakeholders including

- The Office of the Ombudsman
- African Nova Scotian Decade for Persons of African Descent Coalition – Child Welfare Subcommittee
- Nova Scotia College of Social Workers – Child Welfare Subcommittee
- Association of Black Social Workers – Child Welfare Subcommittee

The Review Committee is required to provide the results of its review to the Minister of Community Services for release by March 1, 2021.

The mandate of the Review Committee focused on the following areas of the act:

- **Section 25: Duty to report third-party abuse**, to confirm that the intended reporting duty is appropriately captured, and any potential changes have been considered
- **Section 94: Prohibition on publications**, to determine whether there should be discretion for the minister or the court to publish information in exceptional circumstances
- **Sections 63 – 66: Child abuse register**, to explore if the legislation is effective in keeping children and the community safe

The full text of the provisions for the sections of the act under review can be found in Appendix 2.

The following outlines the recommendations made by the Review Committee.

Section 25: Duty to report third-party abuse

The Review Committee recommends the following related to its review of Section 25 of the act:

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- 1. The department should develop culturally responsive education and awareness materials to improve understanding of child welfare social workers and professionals providing services (such as police, schools, health- and community-based service providers) on the expectations for reporting historical abuse.**

Part of this work will involve furthering the understanding of the reporting of historical abuse and about the fact that reporting historical abuse is not required unless there are indications of a risk to a child who is currently under the age of 16.

- 2. The department should develop culturally responsive education and awareness materials to support social workers and the public to understand the intention and language used for physical harm, emotional abuse, and sexual abuse.**

The materials should include an explanation that sexual exploitation is covered under the term “sexual abuse.” While it was not in scope to review definitions, as these are covered in another section of the act, it was determined that further education and awareness is needed to help provide clarity around expectations for reporting third-party abuse.

- 3. The department should develop education and awareness materials for the general public, as well as for targeted professionals (such as schools, daycares, law enforcement) about their duty to report third-party abuse.**

This should include:

- expectations about when third party abuse must be reported.
- clear processes about how to report and to whom reporting of third-party abuse must be made.

- 4. The department should explore how it could address the inconsistencies experienced by those reporting third-party abuse.**

This may include exploration of how to support a “no wrong door” approach, so that those making referrals are not being redirected.

- 5. The department should develop policies and processes to guide child welfare social workers when prosecution of false or malicious reporting is being considered.**
- 6. For the prosecution of false or malicious reports, the department should work to strengthen relationships between key agencies (such as DCS, police / RCMP, Public Prosecution Service), including defining roles and expectations.**

Section 94: Prohibition on publication

The Review Committee recommends the following related to its review of Section 94 of the act:

- 7. The department should include “care provider” as a party in Section 94 of the act, in alignment with federal legislation: An Act respecting First Nations, Inuit and Métis children, youth and families.**
- 8. The department should strengthen the language in the act regarding what publication means and its application.**

This should include the limitations to a party’s ability to publish information about ongoing child welfare proceedings.

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9. **The department should make Section 94 in the act more explicit regarding the publication ban when proceedings have ended, including proceedings involving a deceased child, and consider how to enable exceptions.**

Potential language suggested includes “the prohibition is in place even after a proceeding ends”.

Consideration should be given to appropriate exceptions to the publication ban, such as with the authority of the minister (or their delegate), with court approval, with consent of the family to whom the matter relates, and / or by the child who was the subject of a proceeding, with consent of parent until 19, then by child.

10. **The department should further explore how to give youth the ability to share information about their experiences in care.**
11. **The department should strengthen relationships between key agencies (such as DCS, police / RCMP, Public Prosecution Service), to define the roles and expectations related to breaches for the release of information.**
12. **The department should develop education and awareness materials for child welfare social workers and create awareness for other interested parties of the expectations for the privacy of the child to be protected, even after death.**

Sections 63 to 66: Child Abuse Register

The Review Committee recommends the following related to its review of Sections 63 to 66 of the act:

13. **The department should consider how young offenders are registered on the Child Abuse Register.**

This should include consideration for the duration of time they will be registered and consideration of whether a reminder notification upon reaching the age of majority should be sent to the person on the Child Abuse Register.

14. **The department should amend Section 63(2)(b) of the act to enable conditional and absolute discharges to result in registration in the Child Abuse Register.**

This should include education and outreach for child protection social workers, court services, and other members of the justice system who may be impacted.

15. **The department should develop education and awareness materials to help inform its child protection social workers about the Child Abuse Register.**

This should include

- the interpretation of “investigations” language for the use of Child Abuse Register searches in different child welfare processes and when consent is required
- the ability to disclose the reason someone is registered on the Child Abuse Register, not the fact they are on the Child Abuse Register
- the importance of gathering the required information during the investigation as it may result in the registration of the individual on the Child Abuse Register

16. **The department should develop education and awareness materials for individuals / general public about the Child Abuse Register.**

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This should include:

- the legislative parameters defining who may request information
- the legislative parameters for how and what may be released about those on the Child Abuse Register to those who have the authority to request information.
- the legislative parameters required in order to register an individual on the Child Abuse Register
- what materials are provided to those registered on the Child Abuse Register (such as a formal letter, how to find out why their name is included, and the process for removing their name)

- 17. The department should examine how to refresh and advance formal policies, processes, and training to outline the circumstances for social workers to consider when making Child Abuse Register applications when there has not been a criminal court conviction.**

Additional recommendations

To continue to address some of the other challenges with the act that were identified by internal and external stakeholders, but were out of scope for this review, the Review Committee recommends the following:

- 18. The department should continue to work toward having investigations of allegations of child abuse by third parties involving African Nova Scotian families completed by social workers who also identify as African Nova Scotian, where possible.**
- 19. The department should continue to provide anti-Black racism training and education to all department staff, including front-line staff, who are completing investigations of allegations of child abuse by third parties to allow them to apply a culturally informed approach to the investigation.**
- 20. The department should address any structural or systemic racism that is present in existing policies and / or processes for reporting and / or investigating allegations of child abuse by third parties.**

Consideration should also be incorporated into the screening and investigation process to determine if there are indications of racial profiling that led to the referral.

- 21. The department should begin to plan a subsequent review of the act, as per Section 88(a), that incorporates diverse stakeholder perspectives and addresses the additional elements identified through this review process.**

This would include engagement with stakeholders from the communities impacted by the CFSA, such as African Nova Scotians and Mi'kmaw.

Introduction to the Review

The Children and Family Services Act (CFSA or act) protects one of Nova Scotia’s most vulnerable populations: children who are living in situations of abuse and / or neglect.

In 2015, the Department of Community Services (DCS or department) put forward a number of amendments aimed at addressing modern practices and family structures. Changes made to the act were proclaimed on March 1, 2017. One of the amended areas of the legislation was Section 88(A), which requires a formal review of selected provisions of the act every four years.

The department was in the initial stages of planning for the review when the province had to respond to the first wave of the COVID-19 pandemic. Responding to the fluid changes required during this pandemic has been challenging. In undertaking the CFSA review, the department identified specific areas where a review would be valuable and could be accomplished with targeted stakeholder engagement to produce recommendations within the mandated timeline.

Therefore, a targeted internal review was undertaken with the understanding there would be future reviews to explore additional areas of the act that could include broader and more comprehensive stakeholder engagements.

This targeted review focuses on whether the language in the specific sections of the act under review is meeting its intended objectives. A Review Committee was established that consisted of staff representing the Department of Community Services, Mi’kmaw Family and Children’s Services (MFCS), and the Department of Justice. The committee’s work was informed by key input from stakeholders including

- The Office of the Ombudsman
- African Nova Scotian Decade for Persons of African Descent Coalition – Child Welfare Subcommittee
- Nova Scotia College of Social Workers – Child Welfare Subcommittee
- Association of Black Social Workers – Child Welfare Subcommittee

The Review Committee is required to provide the results of its review to the Minister of Community Services for release by March 1, 2021.

The mandate of the Review Committee focused on the following areas of the act:

- **Section 25: Duty to report third-party abuse**, to confirm that the intended reporting duty is appropriately captured, and any potential changes have been considered
- **Section 94: Prohibition on publications**, to determine whether there should be discretion for the minister or the court to publish information in exceptional circumstances
- **Sections 63 – 66: Child abuse register**, to explore if the legislation is effective in keeping children and the community safe

The full text of the provisions for the sections of the act under review can be found in Appendix 2.

This report summarizes the work completed by the Review Committee. The committee considered information gathered from a variety of sources, including discussions with, and written submissions from, targeted stakeholders to identify common themes and perspectives, and, ultimately, recommendations.

1.0 Review of Section 25: Duty to Report Third-party Abuse

Background

The full text of the provisions outlined in Section 25 of the act can be found in Appendix 2. The key features of this section include the following:

<p>Scope</p>	<p>“Third party” is a person who is not a parent or guardian of a child.</p> <p>Types of third-party behaviour included</p> <ul style="list-style-type: none"> — physical harm inflicted on the child and / or failure to supervise and protect the child adequately — sexual abuse where the individual with care of the child knows or should know of the possibility of sexual abuse and fails to protect the child — emotional abuse as caused by the intentional conduct of a person
<p>Mandate</p>	<p>Every person who has information, whether or not it is confidential or privileged, indicating that a child under the age of 16</p> <ul style="list-style-type: none"> — has or may have suffered abuse — is or may be suffering abuse — is or may be about to suffer abuse in the imminent future by a person other than a parent or guardian... <p>...shall report the information to an agency.</p> <p>Duty to report applies even if the information on which the person’s belief is based is confidential and its disclosure is restricted by legislation or otherwise.</p> <p>Duty to report does not apply to information that is privileged because of a solicitor-client relationship.</p>
<p>Penalties</p>	<p>Summary conviction for not reporting is liable to a fine of not more than \$2,000 or to imprisonment for a period not exceeding six months or to both.</p> <p>Summary conviction for false / malicious reports is liable to a fine of not more than \$2,000 or to imprisonment for a period not exceeding six months or to both.</p>

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In 2017, a number of amendments were made to Section 25 of the act. These changes, and the rationale for the changes, are outlined below.

Original (Pre 2017 amendments)	Revised / Current (Post 2017 amendments)	Rationale for the Change
S.25 (1) (c) has suffered serious emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour, caused by the intentional conduct of a person other than a parent or guardian.	S.25 (1) (c) suffers emotional abuse, caused by the intentional conduct of a person other than a parent or guardian of the child.	It was noted that it can be difficult to determine that a child is suffering from or demonstrating “severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour.” It was determined belief of emotional harm would be sufficient.
S.25 (2) Every person who has information, whether or not it is confidential or privileged, indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian shall forthwith report the information to an agency.	S.25 (2) Every person who has information, whether or not it is confidential or privileged, indicating that a child under the age of 16 (a) has or may have suffered abuse; (b) is or may be suffering abuse; or (c) is or may be about to suffer abuse in the imminent future, by a person other than a parent or guardian shall forthwith report the information to an agency.	It was noted that the intention of this change was to capture all past, present, and future risk of harm. This change was made across multiple sections of the act to capture any instances where a child has been, is being, or may be being abused.
Not applicable	The following section was added immediately after Section 25: S.25(A) The duty to report pursuant to sections 23 to 25 applies even if the information on which the person's belief is based is confidential and its disclosure is restricted by legislation or otherwise, but it does not apply to information that is privileged because of a solicitor-client relationship.	It was determined that case law acknowledged that this section did not override solicitor-client privilege. In engagement with private lawyers, there was a request that this exception to the duty to report third-party abuse be explicitly recognized as part of the legislation.

Findings

1.1 How do other jurisdictions compare in relation to the CFSA on duty to report third-party abuse?

Nova Scotia is unique in its duty to report third-party abuse requirements

While all Canadian jurisdictions have statutory duty to report requirements, only four other jurisdictions (NB, MB, and limited situations involving violence in NL and BC) were identified as having a duty to report third-party abuse requirements.

Those jurisdictions with third-party abuse reporting requirements have similar triggers to duty to report requirements that are broad in nature, and are not limited to the perpetrator being an adult.

Nova Scotia was found to be the only Canadian jurisdiction that differentiates its duty to report third-party abuse legislation by age.

- For other jurisdictions with legislated duty to report third-party abuse, reporting requirements apply equally to all children and youth under the age of majority (that is, 18 or 19 years of age, depending on the jurisdiction).
- Newfoundland and Labrador recently mandated reporting of maltreatment against youth (16 to 17 years of age) to help community, stakeholders, and their child welfare department to better identify youth who may need protective intervention.

Section 25 helps protect children and youth

Some external stakeholders questioned the need for a dedicated section to report third-party abuse. They felt that the nature of this section is inconsistent with the concepts underpinning the CFSA.

The Review Committee considered this feedback but disagreed with this perspective. The intention of Section 25 of the act is to protect children / youth from abuse and / or neglect from all persons who may be putting them at risk. It was noted that the strength in this section is that it allows the department to make parents or guardians aware of potential abuse their child may be experiencing and offer support and interventions to keep their child safe.

1.2 What types of reporting does the minister want to capture and does the language in the act appropriately reflect this?

There can be confusion about reporting requirements due to the age differentiation for the duty to report third-party abuse

In Nova Scotia, the statutory duty to report requirement, which applies for abuse or neglect by parents / guardians, is for children up to 19 years of age. Conversely, duty to report third-party abuse requirements apply only for children up to 16 years of age.

Internal and external stakeholders identified that there can be confusion for reporting parties, including community-based service providers, on whether there is a requirement to report suspicions of abuse for youth over 16 years of age. Some stakeholders also noted that there are often requests for clarifications from community-based agencies on Nova Scotia's reporting requirements.

Stakeholders from the department and MFCS also indicated that concerns of abuse by third parties related to children over 16 years of age may not be reported since the current act does not require them to be. As a result, youth over 16 years of age may be excluded from receiving or accessing available supports and services.

However, previous engagements on amendments to the act conducted in 2015 with community service providers indicated that imposing duty to report requirements for youth over 16 years of age may prevent those youth who have been victims of sexual assault by third parties from seeking services.

An external stakeholder noted that if children up to the age of 19 are to be protected from abuse by parents or guardians, there is a need also protect children up to the age of 19 from abuse by third parties. The Review Committee considered this feedback, however noted that the definition of child in the Act is not determinative of when and how the Act applies in all situations. For example, children aged 16 and over cannot be taken into care. It was further noted that the age differentiation in the Act is a reflection of best interest considerations of the child as they age.

The Review Committee noted that, while the act does not require reporting of third-party abuse / neglect of youth 16 years of age or older, if the abuse is reported, the department can investigate and / or offer supports and services to the youth.

There is a need to provide further clarity on expectations for

Currently, the legislation, as written, does not require the reporting of historical allegations of abuse by a third party (that is, a non-parent or guardian) if the child is over 16 years of age.

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reporting historical abuse

The requirements for reporting historical abuse were noted by some internal stakeholders as being unclear, and it was indicated that reports of historical abuse may not be consistently reviewed or investigated across the province.

For example, under current legislation, if Jane, at 18 years of age, disclosed that from the ages of 13 to 15, her neighbour had repeatedly sexually assaulted her, and that her neighbour may now be assaulting Joan, another child in her neighbourhood (who is currently under the age of 16), the person to whom this information was disclosed has a duty to report the suspicion of third-party abuse for Joan, but not for Jane.

The Review Committee noted that there may be a need for further education and awareness of reporting requirements for historical abuse; however, they did not feel at this time that there was a need to make changes to the legislation.

There is a need for increased clarity on the terms used in this section of the act

The Review Committee identified that the term physical harm and the definitions for sexual abuse and emotional abuse in the act capture the desired types of reporting. However, the Review Committee also noted that the public and other key stakeholders, such as front-line social workers and professionals (e.g., schools, law enforcement), may not have a sufficient and clear understanding of these terms.

The definition of key terms (physical harm / abuse, emotional abuse, and sexual abuse) varies across Canadian jurisdictions; some have left their definitions broad, while others provided more detail.

The Review Committee noted that some of the definitions in Nova Scotia's legislation were intentionally left broad to enable preventive intervention when and where appropriate.

Physical harm was noted by most stakeholders as not being defined in the act; however, it is the most recognizable and understood form of child abuse.

Emotional abuse was noted by the department and MFCS stakeholders as the only definition to identify "intentional" abuse. The Review Committee noted that this was done to enable the appropriate capture of instances of emotional abuse, meaning those that are not the result of unintentional actions.

Sexual abuse was the most variable of all definitions across Canadian jurisdictions. However, most jurisdictions explicitly refer to sexual exploitation in their definitions of sexual abuse.

The Review Committee noted that, in the previous review of the act, the term "sexual exploitation" was identified as a term that may not be well

understood by the public, and that this definition would be best included within the definition of sexual abuse rather than as a stand-alone term.

During this review, the department and MFCS stakeholders noted that there was a need to provide additional clarity on the definition of sexual exploitation, given the increased prevalence of sexual exploitation as a concern for children and youth in Nova Scotia.

Some stakeholders felt an explicit definition of sexual exploitation in the act, such as the definition being used in practice for youth who experience sexual exploitation, would highlight the fact that youth have a range of unique needs and behavioural issues that need to be effectively addressed. Others felt that the definition of sexual abuse was sufficient.

1.3 Are the circumstances that trigger duty to report third-party abuse sufficient and clear?

The threshold to trigger duty to report third-party abuse is clear and sufficiently broad; however, the process for reporting may not be

Internal and external stakeholders noted a need for increased clarity on the process for reporting. It was noted that those reporting are, at times, being redirected to other child welfare district offices. It was recommended by one external stakeholder that a centralized service / process be implemented to reduce inconsistencies in the experiences by the referral sources.

The Review Committee noted there should be a “no wrong door” approach applied across the department for referrals. Once referrals are accepted, redirection that is required should be done internally by the department and MFCS for further assessment and / or investigation.

All of the major presenting problems for child protection third-party referrals fit the parameters of the current act

Based on a review of child protection third-party referrals between March 1, 2015, and February 29, 2020, it was noted that there was an increase in the number of referrals received post amendments to the act in 2017, as anticipated and highlighted in Table 1 below.

Table 1.

Number of Child Protection Third-party Referrals by Year (March 1 to end of February)				
Pre amendments		Post amendments		
2015 – 2016	2016 – 2017	2017 – 2018	2018 – 2019	2019 – 2020
898	917	1,161	1,255	1,499

Source: Department of Community Services, Integrated Case Management System.

The Review Committee noted that any observed changes to the number of referrals since the amendments to the act could be a result of multiple factors.

— Prior to the amendments, there was extensive consultation not only with the public, but with key stakeholders, such as community-based service

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providers, regarding the duty to report third-party abuse, which may have increased their awareness and understanding.

- The amendments broadened the requirements for reporting, for example, requiring reporting for past, present, and future abuse. This was done in an effort to enable the department to take preventive steps and intervene earlier when and where possible.

Between March 1, 2017, and February 29, 2020, 61 per cent of the child protection third-party referrals were based on a major presenting problem (MPP) of harm or abuse, while 39 per cent were based on a risk of harm or abuse (see Table 2).

Table 2.

Child Protection Third-party Referral Counts by Major Presenting Problem (MPP) by Year (March 1 to end of February)									
MPP	Pre amendments				Post amendments				
	2015–2016	2016–2017	Total		2017–2018	2018–2019	2019–2020	Total	
Harm and Abuse	898	888	1,786	98%	825	747	834	2,406	61%
Risk of Harm and Abuse	0	29	29	2%	336	508	665	1,509	39%
Total	898	917	1,815	100%	1,161	1,255	1,499	3,915	100%

Source: Department of Community Services, Integrated Case Management System.

Note: The department’s Integrated Case Management System enabled the capture of new MPP categories (such as Risk of Harm and Abuse) that reflected the amendments to the act in February 2017, which resulted in some data capture in the pre -amendment year.

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The most common sources of child protection third-party referrals are law enforcement, schools, and other DCS programs

Since March 1, 2017, the most common referral sources have been law enforcement (21 per cent), school (13 per cent), and other DCS programs (12 per cent). Table 3 below highlights the most common referral sources who made third party referrals.

Table 3.

Most Common Referral Sources for Child Protection Third-party Referrals March 1, 2017 – February 29, 2020 (Post amendments)		
Referral Source	Total Referrals	% of all Referrals
Law Enforcement	805	21%
School	498	13%
Other DCS Programs	462	12%
Other	300	8%
Social Worker	287	7%
Self-referral	270	7%
Other Social Agency	243	6%
Relative	124	3%
IWK Hospital	106	3%

Source: Department of Community Services, Integrated Case Management System.

The rate of substantiated child protection third-party referrals since March 1, 2017, was below that for non-third-party child protection referrals made during a similar timeframe

The number, and percentage of total child protection third-party referrals that are investigated increased post amendments (since March 1, 2017). However, the rate of investigations that resulted in substantiation decreased slightly (33 per cent post amendments versus 35 per cent pre -amendments). Table 4 below provides a breakdown of third-party referrals and their outcomes by year.

Table 4.

Child Protection Third-party Referrals and Outcomes by Year (March 1 to end of February)							
	Pre amendments			Post amendments			
	2015–2016	2016–2017	Total	2017–2018	2018–2019	2019–2020	Total
Total Referrals	898	917	1,815	1,161	1,255	1,499	3,915
Investigated Referrals	527	540	1,067	801	877	1,020	2,698
% Investigated	59%	59%	59%	69%	70%	68%	69%
Substantiated Referrals	183	188	371	265	279	334	878

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% of Investigations Substantiated	35%	35%	35%	33%	32%	33%	33%
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Source: Department of Community Services, Integrated Case Management System.

In comparison to non-third-party child protection referrals that were made over a similar timeframe, the rate of substantiation for child protection third-party referrals was lower as evidenced in Table 5 below.

Table 5.

Comparison Across Child Protection Referral Types and Outcomes (March 1 to end of February)						
	Pre amendments March 1, 2015, to February 28, 2017			Post amendments March 1, 2017, to February 28, 2020		
	Child Protection Third-party Referrals	Non-third-party Child Protection Referrals	All Child Protection Referrals	Child Protection Third-party Referrals	Non-third-party Child Protection Referrals	All Child Protection Referrals
Total Referrals	1,815	24,447	26,262	3,915	46,255	50,170
Investigated Referrals	1,067	16,371	17,438	2,698	30,381	33,079
Substantiated Referrals	371	7,532	7,903	878	15,216	16,094
% of Investigations Substantiated	35%	46%	45%	33%	50%	49%

Source: Department of Community Services, Integrated Case Management System.

1.4 Does the act appropriately allow for the prosecution of false or malicious reports and the failure to report?

The act appears to appropriately allow for the prosecution of false or malicious reports or failure to report; however, it was noted that this ability has not been used

The Department of Justice reported that there have been no prosecutions under Section 25 between March 1, 2017, and September 30, 2020.

In general, internal and external stakeholders agreed that the act would support the prosecution of false or malicious reports; however, it was also noted that it can be difficult to determine when or what constitutes a false or malicious report.

One external stakeholder reported receiving complaints regarding malicious reporting, for example, when there are conflicts between

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There is a need for clarity on the roles and responsibilities surrounding prosecution of false or malicious reporting

neighbours, and questioned if a report is determined to be malicious, why charges were not laid.

Internal stakeholders noted that social workers may require further support and education when considering prosecution of false or malicious reporting. This could include considerations for what constitutes evidence of a false or malicious report and how these reports may be impacting the child.

It was also noted by internal stakeholders that there is a need for policies and processes to guide them in pursuing prosecution, and for a more fulsome understanding on behalf of external partners of reporting requirements. This includes key stakeholders such as police, RCMP, Public Prosecution Services, health centres, education partners, and bands.

Recommendations

The Review Committee recommends the following related to its review of Section 25 of the act:

- 1. The department should develop culturally responsive education and awareness materials to improve the understanding of child welfare social workers and professionals providing services (such as police, schools, health- and community-based service providers) on the expectations for reporting historical abuse.**

Part of this work will involve furthering the understanding of the reporting of historical abuse and about the fact that reporting historical abuse is not required unless there are indications of a risk to a child who is currently under the age of 16

- 2. The department should develop culturally responsive education and awareness materials to support social workers and the public to understand the intention and language used for physical harm, emotional abuse, and sexual abuse.**

The materials should include an explanation that sexual exploitation is covered under the term “sexual abuse.” While it was not in scope to review definitions, as these are covered in another section of the act, it was determined that further education and awareness is needed to help provide clarity around expectations for reporting third-party abuse.

- 3. The department should develop education and awareness materials for the general public, as well as for targeted professionals (such as schools, daycares, law enforcement) about their duty to report third-party abuse.**

This should include

- expectations about when third party abuse must be reported.
- clear processes about how to report and to whom reporting of third-party abuse must be made.

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- 4. The department should explore how it could address the inconsistencies experienced by those reporting third-party abuse.**

This may include exploration of how to support a “no wrong door” approach, so that those making referrals are not being redirected.

- 5. The department should develop policies and processes to guide child welfare social workers when prosecution of false or malicious reporting is being considered**
- 6. For the prosecution of false or malicious reports, the department should work to strengthen relationships between key agencies (such as DCS, police / RCMP, Public Prosecution Service), including defining the roles and expectations.**

2.0 Review of Section 94: Prohibition on Publication

Background

The full text of the provisions outlined in Section 94 of the act can be found in Appendix 2. The key features of this section include the following:

Mandate	<p>A person cannot publish information that could identify a child who is a witness, participant, or the subject of a hearing.</p> <p>— This includes information about the parent / guardian, foster parent, or relative of the child that could identify a child.</p> <p>Despite the above, if the court feels the publication of any information would cause emotional harm to the child, it may order a complete prohibition of publication of all or part of the proceedings, regardless of whether they are identifying any parties.</p>
Penalties	<p>A person who contravenes—and a director, officer, or employee of a corporation who authorizes, permits, or concurs in such a contravention by the corporation—is guilty of an offence, and, upon summary conviction, is liable to a fine of not more than \$10,000 or to imprisonment for two years or to both.</p>

There were no changes made to Section 94 of the act in the amendments proclaimed in 2017.

Findings

2.1 How do other jurisdictions compare in relation to the CFSA on prohibition on publication?

Nova Scotia is in line with other Canadian jurisdictions on their prohibition on publication legislation

A review of the related legislation from Canadian jurisdictions found the following:

Area of Review	Findings
Statutory Prohibition on Publication	— All jurisdictions except British Columbia have sections that outline statutory prohibition on publication within their child protection legislation
Penalties	<p>— Fines range from up to \$2,000 (PEI), \$5,000 (MB, NB, NL, QC), or \$10,000 (NWT, NU, YK, AB, ON, NS)</p> <p>— A few jurisdictions only use fines as a penalty (PEI, QC), while others use a fine and / or imprisonment (NS, NL, NB, ON, MB, AB*, YK, NWT, NU)</p>

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	<p><i>*AB – imprisonment may be used only if the fine is not paid</i></p> <ul style="list-style-type: none"> — A few jurisdictions outline penalties for subsequent offences (YK, NB) — A few jurisdictions identify higher fines for corporations (NB, MB)
Persons Named	<ul style="list-style-type: none"> — The majority of jurisdictions identify in their legislation that the child (NS, NL, NB, QC, ON, SK, AB, BC, YK, NWT, NU), and the parent / guardian (NS, NL, NB, QC, ON, AB, YK, NWT, NU) are covered by the prohibition within legislation — Some jurisdictions also identify that the foster parent (NS, NL, ON, NWT, NU), and relatives / family members (NS, NL, ON, AB, NWT, NU) are covered by the prohibition within legislation — PEI and MB provide broader statements
Reference to a Deceased Child	<ul style="list-style-type: none"> — The majority of jurisdictions do not reference a deceased child (NS, NL, PEI, ON, SK, MB, NWT, NU) — Some jurisdictions do not explicitly reference a deceased child but contain exception provisions (subject to judicial oversight) which could be applicable to a deceased child (NB, QC, YK) — Alberta does explicitly exempt deceased children from their prohibition on publication (<i>see further details in notes below</i>)

It was noted that

- British Columbia’s prohibition rests within their Provincial Court Act and includes a provision that applies to matters related to children and families, including child protection
- there are a wide variety of penalties for breaching prohibition on publications
- persons named to protect a child’s identity varies, however, a few jurisdictions leave the definition of persons broad, while the majority of other jurisdictions are specific
- Alberta included an exemption in their legislation in which the publication ban does not apply in the case of a deceased young person. There are mechanisms in place for the family and / or director to make an application for a publication ban for a deceased child if they do not wish to have information released

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2.2 Which persons does the minister want to name in order to protect a child's identity and does the language in the act appropriately reflect this?

Persons named in the act are appropriate, however, given the proclamation of An Act respecting First Nations, Inuit, and Métis children, youth and families on January 1, 2020, the term "care provider" should be added

As noted above, Nova Scotia is aligned with most jurisdictions with the current list of persons identified to protect a child's identity.

Internal and external stakeholders agreed that the term "care provider" should be added as a person as this term is especially relevant in Indigenous communities and would be in alignment with federal legislation, including An Act respecting First Nations, Inuit and Métis children, youth and families.

Internal stakeholders discussed the inclusion of "band designate," however, there was no consensus that inclusion of this term was necessary or appropriate. The Review Committee noted that a band designate may not be tied to any specific child protection case and, therefore, was not appropriate to add at this time.

2.3 Does the act appropriately allow for the prosecution of the breach of the release of information?

The act appears to be worded appropriately to allow for the prosecution of breaches of the release of information; however, there have been no prosecutions to date

Based on the jurisdictional scan, no jurisdictions, including Nova Scotia, reported laying any charges or prosecuting any breaches of the release of information.

Internal stakeholders did not identify any need for significant changes to this section of the act. It was noted that there may need to be an enhancement of language to clearly identify that "to publish or make public" includes posting information to social media, and that these types of posts are considered a breach under this section of the act.

Internal stakeholders indicated that these types of social media posts are an issue particularly in small, rural, and / or close-knit communities where it is easier to make connections to an individual, even when they may not be explicitly named.

An external stakeholder also noted that there is a need to clarify what can be shared, and what information needs to remain protected.

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There is a need for clarity on roles and responsibilities and improved understanding of the processes to prosecute a breach

Internal stakeholders indicated that the process to prosecute a breach under this section of the act is unknown or may not be well understood. It was further noted that providing clarity to the process could likely be achieved through policy, rather than revising the act.

Internal stakeholders also noted that partnerships are important to support prosecution and having improved clarity on the roles and responsibilities of all parties would be helpful. Key partners identified included police, RCMP, and the Public Prosecution Service.

There is a need to consider reporting an individual to their professional body when they breach expectations as defined in the act

It was noted by one external stakeholder that consideration should be given to ethical discipline and reporting to the professional body of the individual who contravenes subsection (1) or (3) of Section 94 of the act.

The Review Committee noted that this would be better suited to the contravention of sections related to the duty to report where there is a failure to report information when there are grounds to believe a child is in need of protection. It was noted by the Review Committee that reporting to professional bodies has merit but may not be best suited to this section of the act.

2.4 Does the act reflect the intention of the minister regarding the privacy of a deceased child?

In general, the act supports the desired level of privacy of a deceased child

Internal and external stakeholders agreed that a child's right to privacy continues after their death, and the general understanding is that the privacy rights of a child are protected even upon death. However, the current language in the act is not explicit on this and leaves it open to interpretation.

Internal stakeholders noted that privacy issues related to a deceased child are a rare occurrence, and that most issues with privacy upon death are related to child death review reporting requirements. It was also noted that an appropriate balance is needed between transparency and the privacy of those involved.

One external stakeholder identified that, upon death, a child's information should be made public to allow for scrutiny, and that any limitations to publication limits the ability of the public to investigate a child's death and provide recommendations.

The Review Committee noted that to make a child's information public is not being respectful toward the child's family (who may not want the information public) or toward the deceased child, who has a right to privacy. It was further noted that the publication of the identity of a child

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is not required to support a fulsome and complete investigation into a child's death.

The Review Committee identified several existing mechanisms, such as the Child Death Review Committee, the Office of the Ombudsman, and internal DCS reviews (where abuse / neglect is suspected or known) as examples that investigate the circumstances that lead to the death of any child in care.

2.5 Should the act include a provision for exceptional circumstances?

Most jurisdictions, including Nova Scotia, do not address exceptional circumstances

The majority of Canadian jurisdictions, including Nova Scotia, do not address exceptional circumstances in their legislation on prohibition on publication. The following exceptions were identified:

- New Brunswick provides the ability to apply for permission from the court to make information public.
- Quebec provides the ability for information to be published upon an order being granted by a tribunal.
- Alberta provides the ability for the director to identify if they are of the opinion the publication is in the child's best interest or necessary for proper administration of justice; a child over 16 years of age to self-identify; and a court to make an order permitting identification if satisfied such an order is in the child's best interest or the public interest. The application for the order may only be brought by child, parent / guardian, or other interested person.
- Yukon provides the ability to seek leave from the court to publish.

There is a need to consider exceptions to an absolute ban

External stakeholders noted that there is no information indicating any issues with the absolute ban on publication, and two written submissions indicated that there should be a substantial burden upon anyone who proposes to create any exceptions.

The Review Committee noted that an absolute ban on publications assumes that there are no scenarios where publication may be appropriate. As noted previously, there are a few jurisdictions (NB, QC, AB, and YK) that have identified limited circumstances under which an exception to the prohibition on publication could be sought.

The Review Committee also noted that, without an exceptions process, the department remains bound by the act, which means there is increased risk of being in violation of the act if circumstances arise where the publication may be in the best interest of the child. Alternatively, the department may be seen as inconsistent if they become aware of a violation and do not pursue addressing it.

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There is a need to explore how to support a child / youth who wishes to share their experiences in a manner that does not cause a breach

Further, the Review Committee discussed the importance of providing youth with an opportunity to have their voices heard and be able to share their stories and experiences when they wish to, and not be in violation of the act.

It was noted by an external stakeholder that children / youth need to have the ability to determine what information about themselves and their experiences can be published. It was noted there may need to be an exception to the prohibition on publication that would allow youth to publish information about their experiences to allow them to connect with others, and / or after a certain age or period of time.

Internal and external stakeholders and the Review Committee noted that there is a need to better educate youth on the implications of sharing their and third-party information, and that youth should be empowered to discuss their experiences.

The Youth Criminal Justice Act could be leveraged as it speaks to a similar prohibition on publication with some limited exceptions.

Recommendations

The Review Committee recommends the following related to its review of Section 94 of the act:

7. **The department should include “care provider” as a party in Section 94 of the act, in alignment with federal legislation: An Act respecting First Nations, Inuit and Métis children, youth and families.**
8. **The department should strengthen the language in the act regarding what publication means and its application.**

This should include the limitations to a party’s ability to publish information about ongoing child welfare proceedings.
9. **The department should make Section 94 in the act more explicit regarding the publication ban when proceedings have ended, including proceedings involving a deceased child and consider how to enable exceptions.**

Potential language suggested includes “the prohibition is in place even after a proceeding ends”.

Consideration should be given to appropriate exceptions to the publication ban, such as with the authority of the minister (or their delegate), with court approval, with consent of the family to whom the matter relates, and / or by the child who was the subject of a proceeding, with consent of parent until 19, then by child.
10. **The department should further explore how to give youth the ability to share information about their experiences in care.**

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- 11. The department should strengthen relationships between key agencies (such as DCS, police / RCMP, Public Prosecution Service), to define the roles and expectations related to breaches for the release of information.**
- 12. The department should develop education and awareness materials for child welfare social workers and create awareness for other interested parties of the expectations for the privacy of the child to be protected, even after death.**

3.0 Review of Sections 63 to 66: Child Abuse Register

Background

The full text of the provisions outlined in sections 63 to 66 of the act can be found in Appendix 2. The key features of these sections include:

<p>Child Abuse Register</p>	<p>The minister (or their delegate) maintains the Child Abuse Register.</p> <p>Names can be entered on the Child Abuse Register if</p> <ul style="list-style-type: none"> — the court finds that a child is in need of protective services in respect of the person within the meaning of clause (a) or (c) of subsection (2) of Section 22 — the person is convicted of an offence against or involving a child pursuant to the Criminal Code (Canada) as prescribed in the regulations — the court makes a finding based on the application from the minister (or their delegate) or agency that, on the balance of probabilities, the person has abused a child
<p>Entry / Removal / Appeal</p>	<p>A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form prescribed by the regulations.</p> <p>A person whose name is entered on the Child Abuse Register may, upon providing written notice to the minister (or their delegate), apply to the court at any time to have the person’s name removed from the register.</p> <p>A decision of the court may, within 30 days of the decision, be appealed to the Appeal Division of the Supreme Court.</p>
<p>Confidentiality</p>	<p>The information in the Child Abuse Register is confidential and shall be available only as provided in Section 66.</p> <p>A person whose name is entered in the Child Abuse Register is entitled to inspect the information relating to that person entered in the register.</p> <p>Information may be disclosed</p> <ul style="list-style-type: none"> — to an agency, including any corporation; society; federal, provincial, municipal, or foreign state; government department; board; or agency authorized or mandated to investigate whether or not a child is in need of protective services — to the police for joint child abuse investigation — for the purposes of research <p>What is disclosed:</p> <ul style="list-style-type: none"> — Whether the person’s name is entered in the Child Abuse Register — Where the person’s name is entered in the Child Abuse Register, any information respecting the person entered in the Child Abuse Register

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In 2017, a number of amendments were made to sections 63 to 66 of the act. These changes, and the rationale for the changes are outlined below:

Original (Pre 2017 amendments)	Revised / Current (Post 2017 amendments)	Rationale for the Change
S.63(2)(b) the person is convicted of an offence against a child pursuant to the Criminal Code (Canada) as prescribed in the regulations; or	S.63(2)(b) the person is convicted of an offence against or involving a child pursuant to the Criminal Code (Canada) as prescribed in the regulations; or	This change was made to capture instances where someone may be involved in sexual exploitation of a child.
S.64(2) A person whose name is entered on the Child Abuse Register may apply to the court at any time to have the person's name removed from the Register and, if the court is satisfied by the person that the person does not pose a risk to children, the court shall order that the person's name be removed from the Register.	S.64(2) A person whose name is entered on the Child Abuse Register may, upon providing written notice to the Minister, apply to the court at any time to have the person's name removed from the Register and, if the court is satisfied by the person that the person does not pose a risk to children, the court shall order that the person's name be removed from the Register.	This change was made to prevent the minister (or their delegate) from not being aware that a person has made an application to request their name be removed from the Child Abuse Register.
S.66(4) Upon the receipt of a request in writing from a person as prescribed by the regulations and with the written consent of the person to whom the request relates, the Minister may disclose information in the Child Abuse Register concerning (a) a person applying to adopt a child or to be a foster parent; or (b) a person, including a volunteer, who is or would be caring for or working with children, and the person who receives the information shall treat the information as confidential. <i>...Continued on next page</i>	S.66(4) Upon receiving a request in writing from a person, the Minister may disclose to the person (a) whether the person's name is entered in the Child Abuse Register; and (b) where the person's name is entered in the Child Abuse Register, any information respecting the person entered in the Child Abuse Register pursuant to subsection (2) of Section 63.	This change was made to protect the privacy of the individual requesting the Child Abuse Register check. Through the current process, the individual makes the request for the Child Abuse Register check and will receive the results themselves to use as needed (e.g. employment, volunteering, etc.), which allows each individual to control who does, or does not receive the results of their Child Abuse Register check.

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Original (Pre 2017 amendments)	Revised / Current (Post 2017 amendments)	Rationale for the Change
S. 66(5) Every person who contravenes subsection (4) and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one year or to both.		

Findings

3.1 How do other jurisdictions compare in relation to the CFSA on the Child Abuse Register?

Nova Scotia allows fewer parties access to information on the Child Abuse Register than other jurisdictions

Nova Scotia, Ontario, and Manitoba are the only Canadian jurisdictions with a Child Abuse Register.

It was also noted that Nova Scotia allows fewer parties access to information on the Child Abuse Register. Additional parties identified in Manitoba and / or Ontario who can access information as per the act include the following:

- Persons providing counselling to persons on the register, physician (with permission from the minister / director)
- Child’s lawyer and coronor
- Licensed adoption agency
- Employer where the person may have access to a child

The information that gets released to eligible persons from the Child Abuse Register differs across jurisdictions, and, by comparison to Nova Scotia, the others have a more defined sets of roles for how information is released to, or how it is accessed by, eligible persons.

While Nova Scotia focuses on disclosing information to eligible parties, it was noted that Ontario allows the following:

- Physicians may “inspect”
- Researchers may “inspect and use”

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— Child’s lawyer and coroner may “inspect, remove, and disclose”

Conversely, in Manitoba, it was noted that an agency, licensed adoption agency, and police are “given access to the registry.”

In jurisdictions that use a Child Abuse Register, it was noted that there have been very few, if any, formal complaints related to the release of information from it.

3.2 Is the threshold for a name to be added to the Child Abuse Register clear and sufficient in this section(s) of the act?

The threshold for adding a name to the Child Abuse Register is clear and sufficient

In general, the majority of internal stakeholders indicated that the threshold for adding a name to the Child Abuse Register is sufficient and clear, however, the following considerations were noted:

- The inclusion of conditional and absolute discharges as outcomes that would result in a person being registered.
- The approach to registration for young offenders.

A conditional or absolute discharge is a situation when an individual has pled guilty or been found guilty of an offence but the conviction has been discharged. The Review Committee and internal stakeholders noted that there is a lack of clarity around why some individuals are or are not being registered on the Child Abuse Register. The Review Committee identified that it seems appropriate to consider that a conditional or absolute discharge should result in registration on the Child Abuse Register.

The Review Committee and an external stakeholder noted that there should be a consideration made for how young offenders are registered and maintained on the Child Abuse Register. Aspects of consideration include the duration of time they remain on the Child Abuse Register, whether the young offender is charged as an adult, notification for / reminders to young offenders when they reach the age of majority, etc.

An external stakeholder noted that young offenders should not be registered. However, the Review Committee noted that this approach would provide the department little flexibility to account for circumstances in which a youth should be registered.

Another external stakeholder noted a need to determine how much information a young person has about the Child Abuse Register, and what the impacts and implications are of them being registered as young offenders.

The Review Committee also noted that there would need to be further discussions with key stakeholders to determine an appropriate approach for registering young offenders. This may include examining the review of

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There is a lack of clarity on the Child Abuse Register processes

Criminal Code sections that result in registration, and potentially the creation of a different list for young offenders.

Internal stakeholders noted that, due to the high turnover of staff, there may be a need for increased information sharing and ongoing training regarding the threshold and expectations for registration of a person on the Child Abuse Register.

It was further noted by some external stakeholders that there may be a lack of clarity from the public as to the parameters that result in someone being registered on the Child Abuse Register, and a need for further education around the process.

In addition, an external stakeholder noted that some clients have previously believed their names to be on the Child Abuse Register due to Section 22(2)(a) or (c), but later discovered they were never registered. It was indicated that it would be beneficial to provide increased clarity on the processes involved when a finding under Section 22(2)(a) or (c) is made by the court and is subsequently communicated to those responsible for registration on the Child Abuse Register.

One external stakeholder noted that the majority of entries in the Child Abuse Register were likely reflective of criminal convictions, which means a criminal records check could yield similar information. However, the Review Committee noted that criminal records checks do not exclusively specify situations when the victim is a child. Further, the criminal database and Child Abuse Register are not connected, and decisions such as a pardon may not be reflected on the Child Abuse Register.

3.3 When a Child Abuse Register search is completed, does the act allow for the right parties to have access to the search outcome?

The act balances the right to access Child Abuse Register search outcomes while respecting an individual's right to privacy

In general, internal stakeholders noted that the act allows the right parties to have access to search outcomes, and finds an appropriate balance between respecting privacy, while providing access to information to those who need to know.

The majority of internal stakeholders did not indicate that there was a need for additional information to be released to eligible parties. However, it was noted by some stakeholders that there may be a need to provide clarity regarding what materials are shared to those registered on the Child Abuse Register, including

- the formal letter indicating they are registered
- how and where to find out why their name was added

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Child welfare social workers need clarity about when a search can be conducted and by whom

— the process for removing their name

The Review Committee noted that there is no appeal process outside of the court, but those registered can make an application for the removal of their name.

It was noted by internal stakeholders that the current language is specific to child protection investigations and may not speak sufficiently to the use of Child Abuse Register search results for other child welfare program areas.

The Review Committee noted that the word “investigation” has broader implications than child protection and should be applicable across all of child welfare. For example, a social worker may be investigating whether a family is suitable for placement of a child in their home. In this instance, the Child Abuse Register search outcome could be applicable to children in care, foster care, and / or adoption settings.

It was also noted by internal stakeholders that there can be challenges for social workers to navigate discussions with a person who is in a relationship with an individual who is registered on the Child Abuse Register, as the social worker cannot disclose that an individual is registered.

The Review Committee noted that social workers are allowed to disclose the reason that someone is on the Child Abuse Register, and that there may be a need for further education and awareness to social workers on what information about the person registered can or cannot be shared. For example, social workers cannot share that the person is on the register, but they can discuss the reasons why the person was registered.

The Review Committee also noted that there may be a need for further education and awareness through policies and processes rather than changes to this section of the act.

3.4 Does the act (and regulations) enable the collection of the necessary information to appropriately register a person on the Child Abuse Register?

The act enables the collection of the necessary information to appropriately register a person on the Child Abuse Register

In general, the majority of internal stakeholders felt that the act allows the necessary information to be collected to register a person on the Child Abuse Register. However, it was noted that consideration could be given to the collection of additional information, such as the following:

- Band card number
- Name of the abused / victim
- Alias of the registrant

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This section of the act is clear and provides the right access to information to keep children safe

— Picture of the registrant

These suggestions were made to support those completing searches in finding the right information, and / or confirming the identity of an individual when they may deny being the person registered.

The majority of internal stakeholders indicated information is shared appropriately. However, it was noted that there may be a need for further education about the limitations of the Child Abuse Register.

Some stakeholders noted that when a Child Abuse Register check shows someone is not registered, it can provide a false sense of security that there are no child protection / child welfare concerns about that individual.

The Review Committee noted that there may be a need for further education and awareness for the public on what information can be accessed from the Child Abuse Register, and how, as well as the purpose of the Child Abuse Register.

The Review Committee noted that the department is working to migrate applications for a Child Abuse Register check to an online platform, and there may be an opportunity to provide increased clarity around the Child Abuse Register through that platform.

3.5 Does the act sufficiently allow for social workers to make a Child Abuse Register application when there has not been a criminal conviction?

There is a lack of clarity for social workers on when they should be making applications to the Child Abuse Register when there has not been a conviction by the court

It was noted by internal and external stakeholders that applications for the Child Abuse Register by a social worker when there has not been a criminal conviction are not common practice, and that many social workers are unaware of their ability / responsibility to complete these applications.

Available data indicates there have been two applications to the Child Abuse Register under Section 63(3) between March 2017 and November 2020.

Internal stakeholders noted that there is a lack of clarity on whether social workers should wait for criminal court proceedings to be concluded before making an application, and the impacts that submitting an application could have on the child and their family.

The Review Committee noted that it is not necessary to wait for criminal court proceedings to end to make an application to the Child Abuse

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Register, but that the application may not be heard by the family court until the criminal matter is resolved.

The Review Committee also noted there is a need to ensure there is a tracking mechanism in place to allow social workers to monitor and track new and ongoing applications to the Child Abuse Register when the child protection file may be closed.

Recommendations

The Review Committee recommends the following related to its review of sections 63 to 66 of the act:

13. The department should consider how young offenders are registered on the Child Abuse Register.

This should include consideration for the duration of time they will be registered and consideration of whether a reminder notification upon reaching the age of majority should be sent to the person on the Child Abuse Register.

14. The department should amend Section 63(2)(b) of the act to enable conditional and absolute discharges to result in registration in the Child Abuse Register.

This should include education and outreach for child protection social workers, court services, and other members of the justice system who may be impacted.

15. The department should develop education and awareness materials to help inform its child protection social workers about the Child Abuse Register.

These should include

- the interpretation of “investigations” language for the use of Child Abuse Register searches in different child welfare processes and when consent is required
- the ability to disclose the reason someone is registered on the Child Abuse Register, not the fact they are on the Child Abuse Register
- the importance of gathering the required information during the investigation if it may result in the registration of the individual on the Child Abuse Register

16. The department should develop education and awareness materials for individuals / general public about the Child Abuse Register.

This should include

- the legislative parameters defining who may request information
- the legislative parameters for how and what may be released about those on the Child Abuse Register to those who have the authority to request information.
- the legislative parameters required in order to register an individual on the Child Abuse Register
- what materials are provided to those registered on the Child Abuse Register (such as a formal letter, how to find out why their name is included, and the process for removing their name)

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- 17. The department should examine how to refresh and advance formal policies, processes, and training to outline the circumstances for social workers to consider when making Child Abuse Register applications when there has not been a criminal court conviction.**

4.0 Additional Findings

Some stakeholders indicated the need to support front-line workers who are completing investigations to be aware of how these investigations can impact African Nova Scotian communities and families.

The ways in which African Nova Scotian families can be impacted include the following:

- Investigations being completed by social workers who may not understand their cultural and familial norms that should inform decision making.
- Structural and systemic racism, and / or racial profiling of African Nova Scotian families that can result in an increased number of referrals.
- Structural and systemic racism that results in increased scrutiny of an African Nova Scotian family during an investigation.

It was further noted that there can be significant impacts to African Nova Scotian families as a result of a person's name being added to the Child Abuse Register, including lessened opportunities for employment and the well-being of their children.

The Review Committee noted that there may be a disproportionate representation of African Nova Scotian persons on the Child Abuse Register due to the overcriminalization of certain communities, or overrepresentation of African Nova Scotian families in the child protection system. However, statistics on the percentage of registrations that are of African Nova Scotian descent are not available.

The Review Committee also noted that the purpose of the Child Abuse Register is to protect children from harm by preventing individuals who are known to have harmed a child from doing so again. It was noted that it is important to find the appropriate balance between maintaining the safety of children and avoiding any structural or systemic racism that may be experienced by African Nova Scotian families in the child welfare system.

In addition to the feedback on duty to report requirements and impacts, one external stakeholder indicated that considerations for prohibition on publication should also include an Afrocentric lens. The department is working to create an Afrocentric lens to apply to all decisions that are made; however, it was noted by the Review Committee that there would need to be further discussions to understand how this lens would apply to this situation before a formal recommendation can be made.

The Review Committee noted that the department has been working on an anti-Black racism strategy / framework that includes impacts to policies, training, educational materials, etc., and that these considerations must be included as part of that work.

To address the findings above, the Review Committee recommends the following:

- 18. The department should continue to work toward having investigations of allegations of child abuse by third parties involving African Nova Scotian families completed by social workers who also identify as African Nova Scotian, where possible.**
- 19. The department should continue to provide anti-Black racism training and education to all department staff, including front-line staff, who are completing investigations of allegations of child abuse by third parties to allow them to take a culturally informed approach to the investigation.**

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20. **The department should enable its anti-Black racism strategy / framework (currently in development) to address any structural or systemic racism that is present in existing policies and or processes for reporting and / or investigating allegations of child abuse by third parties.**

Consideration should also be incorporated into the screening and investigation process for whether there are indications of racial profiling that led to the referral.

Subsequent reviews

Some external stakeholders also noted the following:

- There was insufficient time dedicated to reviewing these key sections of the review.
- There was a lack of data to support the number of Black children who are currently in care.

It was also noted by external stakeholders that there was a need in the future to consider additional elements for the review of the act, including

- cultural considerations, especially as they relate to the preamble of the act, coming into care, placement, and adoption
- the impacts of the amendments to the act made in 2017, with a particular focus on the impact on racialized and Indigenous children, youth, and families, and the support available for social workers to provide for the needs of families

Based on the feedback received from several external stakeholders, the Review Committee recommends the following:

21. **The department should begin to plan out and conduct a subsequent review of the act, as per Section 88(A), that incorporates diverse stakeholder perspectives and addresses the additional elements identified through this review process.**

This would include engagement with stakeholders from the communities impacted by the CFSA, such as African Nova Scotians and Mi'kmaw.

Appendix 1 – Approach

This report summarizes the findings from the jurisdictional analysis, comments made by those who participated in the engagement sessions, and the Review Committee.

All the information gathered from the variety of sources was reviewed and analyzed to identify common themes and perspectives.

Review Committee

Membership of the committee included staff from the Department of Community Services, Mi'kmaw Family and Children's Services, and the Department of Justice. The Review Committee members were

- Director, Child Protection and Children in Care (Chair)
- Project Director, Enterprise Project Delivery Unit
- Director, Client Services, Licensing & Investigations
- Coordinator, Child Protection
- Director of Placement Services
- Managing Lawyer and Senior Solicitor
- Solicitor
- Director of Service Delivery
- Service Delivery Manager
- Child Welfare Specialist (Mi'kmaw)
- Program Manager, MFCS
- Coordinator, Residential Services
- Director, Strategic Policy and Decision Support
- Project Manager, Enterprise Project Delivery Unit

Stakeholder Engagement

Internal

There were 57 participants engaged across 7 groups that represent the following areas:

Representative Area	Number of Attendees	Date of Consultation
Executive Director, Department of Justice	1	October 8, 2020
DCS Coordinators and Child Welfare Specialists	12	October 14, 2020
Child Protection and Children in Care Social Workers and Supervisors from Mi'kmaw Family and Children Services (MFCS)	10	October 15, 2020
Foster Care and Adoption Social Workers and Supervisors from DCS and MFCS	10	October 15, 2020

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Representative Area	Number of Attendees	Date of Consultation
Manager, Information Services and Privacy	1	October 15, 2020
Child Protection and Children in Care Social Workers and Supervisors from DCS	13	October 21, 2020
Legal Counsel and External Legal Representatives of the Minister from all regions of the province, and MFCS	10	October 22, 2020

External

Meetings were held to gather the perspectives and experiences from external stakeholder groups and professionals who may have an interest in, and / or a breadth of experience with the review topics as follows:

Stakeholder Group	Number of Attendees	Date of Consultation
African Nova Scotian Decade for Persons of African Descent Coalition – Child Welfare Subcommittee	3	November 25, 2020
Nova Scotia College of Social Workers	6	November 30, 2020
Office of the Ombudsman	5	December 3, 2020
Association of Black Social Workers – Child Welfare Subcommittee	2	December 3, 2020

Written submissions

In addition to stakeholder engagement, seven written responses were received and reviewed by the committee. This included submissions from

- D.A. Rollie Thompson, Q.C.
- Megan Longley, QC – Nova Scotia Legal Aid
- Nova Scotia College of Social Workers
- African Nova Scotian Decade for Persons of African Descent Coalition – Child Welfare Subcommittee
- Office of the Ombudsman
- Nova Scotia Legal Aid CFSA Best Practices Committee
- Kwilmu’kw Maw-klusuaqn Negotiation Office

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Data Collection and Jurisdictional Scan

Data collection

A variety of sources both internal and external to the department were leveraged to inform this review, including data collection from

- previous consultation with external stakeholders as it related to the sections of the act under review
- existing internal reports or outcomes from working groups
- previous DCS project work
- DCS Integrated Case Management System
- Department of Justice
- Office of the Ombudsman
- Child Abuse Register

Jurisdictional scan

The review sought to understand how other jurisdictions compare in relation to the sections of the act under review. Two types of jurisdictional data were collected:

- **Legislative Data**, as a result of the collection and comparison of legislation from other provinces and territories, including Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Quebec, Ontario, Saskatchewan, Manitoba, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut.
- **Practice and Experience Data**, as a result of responses to questions posed to the provincial directors of Child Welfare from other provinces and territories. Responses were received from Alberta, British Columbia, Northwest Territories, Saskatchewan, Manitoba, Ontario, and Newfoundland and Labrador.

Appendix 2 – Sections of Children and Family Services Act Under Review

The following provides the full text of the sections of the act that were reviewed by the Review Committee.

Section 25: Duty to Report Third-party Abuse

- 25** **(1)** In this Section, a child is abused by a person other than a parent or guardian if the child
- (a) suffers physical harm, inflicted by a person other than a parent or guardian of the child or caused by the failure of a person other than a parent or guardian of the child to supervise and protect the child adequately;
 - (b) is sexually abused by a person other than a parent or guardian of the child or by another individual where the person, not being a parent or guardian of the child, with the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child; or
 - (c) suffers emotional abuse, caused by the intentional conduct of a person other than a parent or guardian of the child.
- (2)** Every person who has information, whether or not it is confidential or privileged, indicating that a child under the age of sixteen
- (a) has or may have suffered abuse;
 - (b) is or may be suffering abuse; or
 - (c) is or may be about to suffer abuse in the imminent future,
- by a person other than a parent or guardian shall forthwith report the information to an agency.
- (3)** Every person who contravenes subsection (2) is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both.
- (4)** No proceedings shall be instituted pursuant to subsection (3) more than two years after the contravention occurred.
- (5)** No action lies against a person by reason of that person reporting information pursuant to subsection (2) unless the reporting of that information is done falsely and maliciously.
- (6)** Every person who falsely and maliciously reports information to an agency indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian is guilty of an offence and upon summary conviction is liable to a fine or not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 25; 1996, c. 10, s. 4; 2015, c. 37, s. 15.

Section 94: Prohibition on Publication

94 (1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

(2) Where the court is satisfied that the publication of a report of a hearing or proceeding, or a part thereof, would cause emotional harm to a child who is a participant in or a witness at the hearing or is the subject of the proceeding, the court may make an order prohibiting the publication of a report of the hearing or proceeding, or the part thereof.

(3) Where the court makes an order pursuant to subsection (2), no person shall publish a report contrary to the order.

(4) A person who contravenes subsection (1) or (3), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and upon summary conviction is liable to a fine of not more than ten thousand dollars or to imprisonment for two years or to both. 1990, c. 5, s. 94.

Sections 63 to 66: Child Abuse Register

Child Abuse Register

63 (1) The Minister shall establish and maintain a Child Abuse Register.

(2) The Minister shall enter the name of a person and such information as is prescribed by the regulations in the Child Abuse Register where

(a) the court finds that a child is in need of protective services in respect of the person within the meaning of clause (a) or (c) of subsection (2) of Section 22;

(b) the person is convicted of an offence against or involving a child pursuant to the Criminal Code (Canada) as prescribed in the regulations; or

(c) the court makes a finding pursuant to subsection (3).

(3) The Minister or an agency may apply to the court, upon notice to the person whose name is intended to be entered in the Child Abuse Register, for a finding that, on the balance of probabilities, the person has abused a child.

(4) A hearing pursuant to subsection (3) shall be held in camera except the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 63; 2015, c. 37, s. 51.

Notice of entry in and application to remove name from Child Abuse Register

64 (1) A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form prescribed by the regulations.

(2) A person whose name is entered on the Child Abuse Register may, upon providing written notice to the Minister, apply to the court at any time to have the person's name removed from the

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Register and, if the court is satisfied by the person that the person does not pose a risk to children, the court shall order that the person's name be removed from the Register. 1990, c. 5, s. 64; 2015, c. 37, s. 52.

Appeal respecting Child Abuse Register

65 A decision of the court pursuant to subsection (3) of Section 63 or subsection (2) of Section 64 may, within thirty days of the decision, be appealed to the Appeal Division of the Supreme Court and subsection (4) of Section 63 applies mutatis mutandis to the hearing of an appeal. 1990, c. 5, s. 65.

Confidentiality of information in Child Abuse Register

66 (1) The information in the Child Abuse Register is confidential and shall be available only as provided in this Section.

(2) A person whose name is entered in the Child Abuse Register is entitled to inspect the information relating to that person entered in the Register.

(3) With the approval of the Minister, the information in the Child Abuse Register may be

(a) disclosed to an agency, including any corporation, society, federal, provincial, municipal or foreign state, government department, board or agency authorized or mandated to investigate whether or not a child is in need of protective services;

(aa) disclosed to the police by an agency where the police and the agency are conducting a joint child abuse investigation;

(b) used for the purposes of research as prescribed by the regulations.

(4) Upon receiving a request in writing from a person, the Minister may disclose to the person

(a) whether the person's name is entered in the Child Abuse Register; and

(b) where the person's name is entered in the Child Abuse Register, any information respecting the person entered in the Child Abuse Register pursuant to subsection (2) of Section 63.

(5) *repealed 2015, c. 37, s. 53.*

1990, c. 5, s. 66; 1996, c. 10, s. 9; 2015, c. 37, s. 53.