

The Forgotten Ones

THE IMPACT OF COVID-19 ON BLACK FAMILIES AND
BLACK CHILD WELFARE SURVIVORS DEALING WITH
ONTARIO'S CHILD 'PROTECTION' SYSTEM

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It is this ongoing interdiction of a potential Black freedom that I have termed *the long emancipation*...the time of the long emancipation continues to tie Black people to the regimen of slave and plantation logics and economies...It is the continuation of the juridical and legislative status of Black nonbeing.

”

– *Rinaldo Walcott, the Long Emancipation: Toward Black Freedom, p. 1-3.*

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Terms

Anti-Black Racism: refers to the systemic, institutional, structural, and individual devaluation, dispossession, and dehumanization of Black peoples. This occurs both globally and locally, as well as culturally, politically, socially, and economically and is woven into the fabric of every society. The contemporary experience of Black peoples is inextricably linked to the history of the Transatlantic slave trade, slavery, and segregation and impacts every sphere of our lives including (but is not limited to) immigration, education, child welfare, health care, and policing. Anti-Black racism is both overt and subtle, and in Canadian society often is embedded ideologies of liberalism, multiculturalism and rarely addressed in co-opted notions of "diversity" and "inclusion". Theoretically, anti-Black racism demands that we address the oppression of Black peoples in the multiple forms it exists due to the multiple identities that we hold, and that liberation only comes when we're all liberated. Anti-Black racism as a theoretical lens also looks to acknowledge and (re)surface the ways in which Black peoples resist our oppression, both historically and contemporarily.

CHILD PROTECTION-RELATED PLACEMENT OPTIONS:

Five placement options that a child protection agency can choose from: kinship service, kinship care, customary care, legal custody, and adoption. Transition into adulthood is considered another option.

Kinship service refers to individuals who have a relationship to the child/youth. This relationship does not have to be based on biology, rather it is about a strong social connection. A child/youth can be placed in kinship service where they are placed in the home of this kind but do not have the "in-care" status.

Kinship care is similar to kinship service, however the status "in-care" accompanies the placement.

Customary care is specific to First Nation, Métis, and Inuit (FNMI) children/youth who are placed in such a way to honour First Nation, Métis, and Inuit Peoples' communal and family structures that focus on the collective responsibility towards children and youth.

Legal custody refers to when a court through the *Child, Youth, and Family Services Act, 2017* ("CYFSA") determines a child is in need of protection in the custody of a relative or community member. This can be an extended family member, community member, or foster parent legally gaining guardianship of a child. What is distinct about legal custody is the child maintains their name, contact with family, and rights of inheritance.

Finally, adoption is the legal process that places a child permanently with a family different from their home of origin.

Child Welfare Survivor

The use of the term survivor is to note that children and youth are placed in a system that is inherently oppressive, and those within the system actively navigate to remain alive and challenge the situations they're placed in. "Surviving" contextualizes actions taken by oppressed peoples/groups that may seem "wrong", "contradictory", or "pathological". A child welfare survivor is considered to be any child or young person who experiences the child welfare system as a "client."

Liberation

Refers to living in a world that is equitable, accessible, and genuinely inclusive and is absent of oppression and injustices. It is both an endpoint and a process without an ending and demands a world where when wrong happens these wrongs are adequately attended to. Liberation means to live in a world without fear of persecution, death and lack due to the identities you hold. Liberation is the ability to be at home in our bodies, and Walcott (2003) says home for Black peoples is an ethical space.

Misogynoir

- Refers to the hate and disrespect of Black women and femme folks that is deeply embedded in various systems, and is social, cultural, political economic. manifestation of gendered anti-Blackness directed at Black women (Trans inclusive understanding).

Sanism

(Also known as mentalism)/anti-Black sanism: a form of discrimination and oppression against people who have been engaged by the psychiatric system (diagnosis, counselling, institutionalization). This discrimination may or may not be described in terms of mental disorder or cognitive impairment, and also can come from assuming someone has a diagnosis. Sanism can look like denying people privacy, freedom, mobility, as well access to employment, education, etc. Anti-Black sanism refers to the specific experience of sanism for the Black community where the intersections of anti-Black racism and sanism intersect to cause overrepresentation in institutionalization, inadequate care, as well as murders from police.

Section 1: Introduction

In March 2020, the world faced a new pandemic presented by COVID-19. As a result, restrictions had to be put in place to reduce the risk and harm of COVID-19 globally and locally here in Ontario, Canada. While these were necessary restrictions, they were accompanied with challenges and significant impacts, especially for underresourced and systemically neglected communities such as Black communities.

This study focuses on the impact of COVID-19 on Black child welfare survivors¹ and Black families/caregivers' experiences with Ontario's child protection system amid the changes/restrictions made in response to the virus. In some ways, this report also illuminates what these experiences have been during the pandemic, whether directly related to impacts of COVID-19 or a mere reflection of how child welfare agencies/courts treat Black people in general.

One obvious impact of COVID-19 was the initial move to no in-person contact directives for courts and offices like Legal Aid of Ontario ("LAO"), the Office of the Children's Lawyer ("OCL"), and many child protection agencies. This limited clients' access to family lawyers, relevant services and supports, and even barred family members from accessing children in out-of-home placements.

Prior to COVID-19, multiple public, journalistic and scholarly reports consistently described the prevalent issue of anti-Black racism in Ontario's child welfare system at all levels: child protection investigation, service provisions, and post-placement for child welfare survivors. With COVID-19 restrictions presenting as a possible exacerbating factor in Black peoples' experiences of anti-Black racism, coupled with the fact that the child protection system is commonly understood as "difficult," it would only be logical to give these experiences/systems particular attention.

¹ See Terms section for further explanation of the use of the term "child welfare survivor"

In January 2021, a team of three white legal researchers announced a project on the impact of COVID-19 on family law systems. Inquiries were made as to whether the researchers would be adding a very logical focus into the experiences of Black, Indigenous, and racialized people within the child protection system, to which the researchers stated those questions and concerns were not within the scope of their project.

Therefore, this study is an attempt to begin to fill this kind of scholarly neglect and to illuminate the kinds of issues emanating out of legislative changes in response to COVID-19, and how this impacts the lives of Black child welfare survivors and Black families/caregivers in this province.

However, as explained later in this report, COVID-19 restrictions presented as a problem even in the ability to conduct research and get access to research participants. For this reason, this report should only be considered a beginning into understanding the experiences of Black child welfare survivors and Black families/caregivers having to encounter child protection in Ontario.

It is recommended that an important issue such as this be interrogated with studies that have more capacity and resources, and that centre the use of interviews as a method. However, any new studies should not just reproduce the kinds of questions found in this study, but rather dive into other relevant areas.

Overall, this research project reflects a serious concern with respect to if the child protection system is promoting the best interest of the child for Black children. It illuminates how the socioeconomic, health, and legal conditions of COVID-19 work in hand with anti-Black racism, where Ontario's child protection system is barely meeting the low and ambiguous standard of "promoting" the best interest of the child, let alone actualizing the best interest of the child in the case of Black children.

This includes a stark reality that governmental agencies such as the OCL and Children's Aid Societies ("CAS") can, and do, play a detrimental role in the lives of Black children and Black families in this province in the context of child protection.

Section 2: Historical & Social Context

Many Black community members, organizers, activists, and scholars rightfully pointed out that prior to COVID-19 Black people were already subject to a global pandemic: anti-Black racism. The child protection system plays a significant role in this pandemic in Black people's lives.

In the context of Ontario, Canada, child welfare has repeatedly come under fire for its consistent and endemic anti-Black racism. Overrepresentation of Black children in Ontario's child "protection" system is consistently cited as a signifier of anti-Black racism.² The Ontario Association of Children's Aid Societies ("OACAS") pointed to fraught investigations littered with classist and anti-Black standards and assumptions about Black people's ability to parent, as well as common anti-Black constructions of Black people, such as "aggressive" when resisting and challenging child protection investigations and agents.³

OACAS also directed attention to anti-Black racism at the systemic level, where resources for Black families and children were underfunded or non-existent.⁴ There were also complaints that CAS did little work to provide culturally relevant Service Plans to Black families and children, often forcing Black clients to adhere to the plan or be blamed.⁵

Research also shows that Black child welfare survivors experience a significant amount of violence in out-of-home placements.⁶ It's been argued that anti-Black racism also functions through the sexual, physical, emotional, psychological, and spiritual violence child protection forces on Black child welfare survivors.⁷

² Lamers, J., "From Topic and Evidence to Architect: The Development of Black Diasporic Interpretive Phenomenology and the Resistive Strategies of Black Child Welfare Survivors" in Rona Julla van Ouden Hoven, ed, *The Myth of Child Protection* (Antwerpen: Garant, 2022).

³ Ontario Association of Children's Aid Society (OACAS), *One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians- Practice Framework Part 1: Research Report* (2016).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Supra* note 2.

⁷ *Ibid.*

This violence includes direct forms of anti-Black racism, such as the use of the n-word, exclusion, differential treatment particularly in the form of discipline and punishment, and the use of police to assert control on Black children.⁸ Black child welfare survivors also reported that child protection agents and judges did very little to protect them from this violence, including not believing them when it was reported.⁹

It is common knowledge that the socioeconomic outcomes for Black child welfare survivors are dire. We are more likely to be funnelled into carceral institutions like psychiatric and criminal punishments systems, shelter systems, and Ontario Works/Ontario Disability Support Programs, while unlikely to graduate high school.¹⁰

This very brief description of the pandemic child welfare subjects Black child welfare survivors and Black families/caregivers to should raise significant concern about how the socioeconomic conditions and realities of COVID-19 possibly exacerbates the issues outlined above.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

Section 3: Theoretical Framework

This study uses an assemblage of various theoretical and methodological positions which are not necessarily mutually exclusive and often function together. This theoretical framework imbues the entirety of the project with this critical approach, including the literature review and methodological approaches.

This also means the theoretical framework necessitates a critical approach to research participants' responses, where the data they provide may implicate them in some of the very power dynamics that oppress Black families and Black child welfare survivors interacting with child protection in Ontario. Essentially, this theoretical framework directs one to say what needs to be said in the interests of Black child welfare survivors and Black families, even if that causes upset and discomfort.

The Black Radical Tradition and Black Feminist Thought grounded in decolonial paradigms are the main theoretical pillars for this study. The description provided here is brief and does not represent the depth and breadth of these bodies of work, and again these are not mutually exclusive areas of thinking and working.

DECOLONIAL PARADIGMS

When thinking through what decolonization means as a project toward Black freedom, this study begins with Frantz Fanon's description. He states decolonization, "...sets out to change the order of the world, [and] is clearly an agenda for total disorder."¹¹ Decolonization necessitates a fundamentally different and new understanding of what "human" means.¹² Fanon expressly states that decolonization "...implies the urgent need to thoroughly challenge the colonial situation...[and] smash every obstacle encountered."¹³

¹¹ Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press 1963) at 2.

¹² *Ibid.*

¹³ *Ibid.*

Rinaldo Walcott extends this thinking into what he terms a pure decolonial project.¹⁴ Walcott argues a pure decolonial project moves toward these new ways of understanding and living by making anti-Blackness and Black ways of understanding the world central to any analysis with respect to decolonization.¹⁵

THE BLACK RADICAL TRADITION

The Black Radical Tradition can be described as "...the historical practices of Black revolt against racial capitalism—the conjunctural system of white supremacy and capitalism—as well as the body of intellectual work that has drawn on this history of Black revolt to theorize and strategize Black freedom and Black sovereignty."¹⁶

The Black Radical Tradition extends to refusing notions of citizenship/belonging with respect to the white supremacist anti-Black cisheteropatriarchal settler colonial structure and state, including the kinds of celebrations made in the name of multiculturalism, diversity, and inclusion.¹⁷

¹⁴ *The Long Emancipation: Toward Black Freedom* at 56.

¹⁵ *Ibid* at 57.

¹⁶ Peter James Hudson & Aaron Kamugisha, "On Black Canadian Thought" (2014) 20:1 CLR James J 1 at 9.

¹⁷ *Ibid*.

BLACK FEMINIST THOUGHT

Black women pioneered the canon known as Black Feminist Thought, which refers to the intellectual and organizing tradition of addressing the crossroads of race, gender, class, and sexuality—initially through the experiences of Black women.¹⁸ Particularly, Black Feminist Thought looks at the violences that occur at the intersection of anti-Blackness and sexism.

Black Feminist Thought expresses Black women’s radical theorizing, writing and practices of care and organizing to create liveability and futurity for Black women.¹⁹ Black Feminist Thought is now more expansive, extending to various experiences and avenues of thinking, writing, and working in the interests of gender-oppressed people, such Black Trans and gender non-conforming people and Black queer people.

¹⁸ Patricia Hill-Collins, *Black Feminist Thought*, (New York: Routledge, 2000) at 11-12.

¹⁹ *Ibid.*

Section 4: Literature Review

CONDUCTED BY SEHER ALI

PURPOSE

This literature review is an attempt to fill in some of the picture of Black child welfare survivors' and Black families' experiences with Ontario's child welfare system during COVID-19. This literature review engages relevant legislation, policies, announcements, news articles, and media.

Narratives that could be found involving Black child welfare survivors and Black families in the last two years will be presented, both in the child protection and other carceral systems given the process of "aging out" of the child welfare system and being funneled into other systems. There is a scarcity of literature that is currently available on this specific issue; therefore, this literature review engages and synthesizes various studies related to COVID-19 and Black communities.

METHOD

Alongside announcements and media, case research provided those narratives. Using CanLii, the following search terms and areas of law were inputted:

FAMILY LAW	"Black" AND "Indigenous" AND "Child" AND "COVID-19" AND "Pandemic"
CRIMINAL LAW	"Black" AND "Indigenous" AND "Child Welfare" AND "COVID-19" AND "Pandemic"

LEGISLATIVE ANNOUNCEMENTS AND CHANGES

The *Child Youth and Family Services Act, 2017* is the overarching legislation that regulates child welfare in Ontario, including child protection. The *CYFSA* states that its paramount purpose is to promote the best interest, protection, and well-being of children and youth.²⁰

The *CYFSA* provides the rights of children, youth, and families, as well as the obligations and responsibilities of CAS in Ontario. It also describes the various grounds in which a child can be found to be in need of protection, and directs the kinds of considerations child protection agents, supervisors, and judges are meant to make when making determinations. The *CYFSA* also acknowledges the need to "...center and support diverse children and families towards better outcomes."²¹

It is important to note that the language of the *CYFSA* lacks the rigour and commitment that could alleviate some of the ongoing issues within child protection. The *CYFSA* does not "ensure" the best interest, protection and well-being of children, youth, and families. Rather, it only merely "promotes" those qualities of life, leaving a significant amount of room for error and harm that can have particular impact on Black communities in this province.

In July 2020, Premier Doug Ford's Progressive Conservative government announced they would be making reforms to child welfare in Ontario. The stated goal of their Child Welfare Redesign Strategy ("Strategy") is to both reduce the number of Indigenous children in foster care by 25% and have 85% of child welfare survivors' time in care be spent with family-based placements by 2025.²²

²⁰ SO 2017,c 14, s1 [CYFSA].

²¹ *Ibid.*

²² Dawson, "Ontario to overhaul child welfare system, will focus on keeping children linked to their family," *National Post* (29 July 2020), online: <nationalpost.com>.

After the initial announcement, the Ontario government released an online survey to further develop their goals. By February 2022, the Strategy expanded into four major intended outcomes for children, youth, and families.²³ These outcomes were: *safety, voice, stability, and wellbeing*.²⁴ The strategy also asserts three intended outcomes for the child welfare system itself:

- 1 To increase quality of service for children;
- 2 To decrease disparities for overrepresented groups such as Black, Indigenous, racialized, and 2SLGBTIQ+ youth; and
- 3 To create sustainability for the child welfare sector through emphasizing efficiency as well as flexibility to the new reality of the COVID-19 era.²⁵

The Strategy also presented a timeline for when the government will report on its progress with respect to these purported reforms.²⁶ The timeline details several acclaimed action items, such as:

- In March 2020, an announcement on the moratorium of child welfare survivors aging out of the system;
- An announcement of \$5 million in new funding for prevention-focused customary care for Indigenous youth in July 2020;
- In July 2020, they released a "Quality Standards" resource guide to improve the quality of care for young persons in licensed residential settings;
- In August 2020, the government provided \$200,000 to Peel CAS for its Child Welfare Immigration Centre of Excellence Program;
- In September 2020, the announcement of \$650,000 to continue strengthening supports for African-Canadian and Black children and 'youth in care';
- In October 2020, the government alleged they would end the practice of birth alerts;

²³ Ministry of Children, Community, and Social Services, *Child Welfare Redesign Strategy*, 2021, s 2.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

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- In November 2020, the announcement of \$1.5 million in programs to make the public adoption process easier and faster;
 - In February 2021, the announcement of a continued moratorium on youth aging out;
 - In May 2021, the announcement of \$1.5 million for the Education Liaison program to allegedly improve educational outcomes for child welfare survivors and announced funding for that program will total \$5 million annually;
 - In July 2021, the announcement of an \$800,000 Investment in *One Vision One Voice*, an initiative connected to the government itself through OACAS;
 - In November 2021, the announcement of providing 'start-up costs' for those trying to adopt;
 - In February 2022, the announcement of its giving millions to mentorship programs; and
 - Most recently, the announcement that they would make new statutory amendments for First Nation, Inuit, and Metis children, youth, and families. However, this announcement lacked direction on what these changes would possibly be.²⁷

Other commitments presented by the Ministry of Children, Community and Social Services as a plan for 2021-2022 included Youth Justice modernization, the Black Youth Action Plan, and Poverty Reduction Strategies as well.²⁸ All of these plans allege to be beneficial to youth altogether, including child welfare survivors, and the topics they address are relevant to the barriers faced by child welfare survivors who are further marginalized by anti-Black racism, criminalization, and/or poverty.

On March 13th, 2020, The Ontario Human Rights Commission ("OHRC") also released a policy statement regarding the obligations of the Ontario government in how it responds to COVID-19 for those living in certain institutions. The OHRC states:

²⁷ *Ibid.*

²⁸ *Ibid.*

The government has a fiduciary obligation to protect the health and safety of individuals held in government-run facilities related to child welfare, youth justice, criminal justice, long-term care, etc. These facilities disproportionately house individuals protected from discrimination under the Code, including Indigenous and racialized people, people with disabilities and addictions, elderly people, children and youth, and other vulnerable groups. The government must have clear emergency plans in place that adopt a Public Health and human rights-focused approach to addressing evidence-based risks associated with COVID-19 in government-run facilities. Individuals in these facilities also have the right to be free from discrimination including harassment related to COVID-19 in the provision of services on grounds under the Code. Under the Charter, these individuals have a right to privacy, liberty and security of the person and the right to protection against discrimination, arbitrary detention, and cruel and inhuman treatment, subject to reasonable limits.²⁹

POLICY AND SERVICE CHANGE

A variety of service changes in public institutions occurred throughout the COVID-19 pandemic because of the new challenges and demands COVID-19 presents. Following the *Emergencies Act*, family law courts were forced to operate online, including for child protection proceedings. This came with the anticipated disruptions, shutdowns, decreased speed or capacity, program cancellations and terminations and overhauls. These especially occurred in the first several months of the pandemic as these institutions adjusted to not being designed to provide online services and unprepared for the significant increase of needs during the pandemic.

Since then, family law courts continue to stress "...the importance of limiting in-person attendance at courthouses" and the commitment by the court to facilitate proceedings using remote technology wherever possible unless "meaningful access to justice requires an in-person meeting."³⁰

²⁹ Ontario Human Rights Commission, (Policy statement on a human-rights based approach to managing the COVID19 pandemic, 2021) online: <ohrc.on.ca>.

³⁰ Ontario Court of Justice, *COVID-19 Notices and Information* (May 18 2021) online: <ontariocourts.ca>.

This meant institutions and organizations that provide services to Black child welfare survivors and Black families reduced and changed services to limit the spread of COVID-19, such as face-to-face interactions being limited in government-run facilities for youth, as noted by a statement from a group of Black health leaders on the impact of COVID-19 on Black communities.³¹ This includes a direct impact on the experiences of Black child welfare survivors in government-run facilities.

Other closures of in-person services in various establishments attended by Black child welfare survivors and their families, such as the LAO announcing closures for in-person appointments, or CAS shutting down supervised access centers.

The impact of the pandemic produced an instant change from in-person supervised parent-child visits to virtual ones for loved ones with supervised access. Social distancing related service changes "add pressure to stressed child welfare systems that already offer little guidance or structure to parents and caregivers related to family time, and there is little, if any, guidance specifically for virtual family time, which comes with its own unique set of challenges."³²

RELEVANT COVID-19 RESEARCH AND REPORTS

The OACAS project on anti-Black racism in Ontario's child protection system, *One Vision One Voice [OVOV]*, made findings which indicated that CAS contact did not improve mental health outcomes for any mental disorder, any self-reported mental disorder, lifetime or past year suicidal ideation, lifetime or past year suicide plans, past year suicide attempts, positive functioning, and emotional well-being or current distress.³³ However, those with CAS contact compared to those without CAS contact were more likely to report lifetime suicide attempts.³⁴

³¹ Alliance for Healthier Communities, "Statement from Black Health Leaders on COVID-19's impact on Black Communities in Ontario" (2nd April 2020), online: <allianceon.org>

³² Laura Orlando, Ashley N. Rousson & Susan Barkan et al, "Responding to COVID-19's impact on supervised family time: The supportive virtual family time model" (2021) at p 3.

³³ One Vision One Voice Knowledge Center, "The relationship between child protection contact and mental health outcomes among Canadian adults with a child abuse history" (2018).

³⁴ *Ibid.*

The results of the Domino Project's Virtual Discussion Series also addressed certain mental health impacts of the COVID-19 pandemic.³⁵ The first discussion in the series focused on how COVID-19 impacted Black queer and trans people who accessed their program, and shared firsthand accounts about COVID-19 and mental health.

For example, a panelist stated, "I think honestly what I've noticed since the lockdown has started, for myself a heightened anxiety and I find myself to be more hypervigilant when going out to do basic things like grocery shopping and you know day-to-day tasks I need to do for myself."³⁶

Some 'Long Term Impacts on Daily Life' were also listed, such as the beneficial impact of increased access to online supports, but also the negative impacts of loss of employment opportunities, and the youth observing racial inequalities regarding consequences for breaching COVID-19 guidelines.³⁷

Black health leaders made a public statement on the impact of COVID on Black community health, stating, "As the province works to contain COVID-19, face-to-face visits with children and youth in care have been suspended. Black children and youth are over-represented in government care. These restrictions deeply impact Black families."³⁸

The Mental Health Commission reported on the health impacts of the COVID-19 pandemic on incarcerated populations, stating "those who are Black or Indigenous are already more likely to contract COVID-19 and die from it."³⁹ Among people who are incarcerated, there were high rates of infectious disease, chronic illness and mental health concerns, and conditions in correctional facilities contribute to higher risks of infection partly because of challenges in implementing public health measures such as physical distancing, hand-washing, cleaning, and protective attire.⁴⁰

³⁵ Ontario Trillium Foundation, Domino Table Talk I: Impacts of COVID-19 on Black LGBT Youth (2020) online: <blackqueeryouthcollective.org>.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Supra* note 32.

³⁹ Mental Health Commission of Canada, "COVID-19, Mental Health, and Substance Use in Correctional Settings: Considerations for Addressing Systemic Vulnerabilities" (2021) at 23-28.

⁴⁰ *Ibid.*

Advocates also raised concerns about the difficult conditions in prisons and detention centers during this pandemic. These conditions impact infectious disease outbreak and pose specific risks in the context of the COVID-19 crisis. "Black and Indigenous communities are over-represented in Ontario's prisons; outbreaks will disproportionately impact our communities."⁴¹

In terms of the kinds of conditions within child welfare spaces, data analyzed by Global News showed an increase in the use of restraints and the number of serious incident reports.⁴² The report found there were over 1,000 reports of serious injuries in Ontario and over 2,000 reports of physical restraints being used in the year.⁴³ However, the Global News article did not give any indication on the experiences of Black child welfare survivors.

⁴¹ *Supra* note 12.

⁴² Andrew Russell, Carolyn Jarvis et al, "Inside Ontario's Scary Child Welfare System Where Kids are Commodities", Global News (2022) online: <globalnews.ca>

⁴³ *Ibid.*

IMPACT ON FAMILY COURT PROCEEDINGS FOR BLACK CHILD WELFARE SURVIVORS & FAMILIES

The next section will explore the impact of public health measures, social distancing and lockdown measures have had on family law cases involving Black and Afro-Indigenous child welfare survivors. It also indicates some of the experiences of Black people, whether that be between various parties (kin, parents, children's aid society, etc.) or court comments/findings.

Family court cases involving Black and Afro-Indigenous child welfare survivors showed delays in processes associated with the child welfare system, having a deleterious and dangerous impact on Black/Afro-Indigenous child welfare survivors.

For example, in *CAS v. J.P.* there was an active issue of anti-Black racism directed towards the Afro-Indigenous child and his Black father, firstly with the white foster guardians and then the Indigenous kinship guardian on the mother's side with whom CAS placed the child.⁴⁴

This included the white foster guardians making false allegations against the Black father and refusing to provide supports related to the child's Afro-Indigeneity.⁴⁵ When placed with the Indigenous kinship guardian, this guardian made attempts to manipulate the child away from the Black father, including employing surveillance tactics against the father, unlawfully posting on Facebook videos of the child crying in attempts to vilify the father, and speaking negatively about the father's Black community.⁴⁶

Delays in the proceedings forced the child to remain under the supervision of this guardian even as the child protection worker themselves shared in these concerns about anti-Black racism, and the Black father was not able to see the child until Summer 2020.⁴⁷ The delays were so extensive that the child remained in this environment until June 2021.⁴⁸

⁴⁴ 2021 ONSC 7691 at paras 59, 80(iii).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid* at para 14.

⁴⁸ *Ibid* at para 23.

In *Kina Gbezhgomi Child and Family Services v. M.A.*,⁴⁹ and *CAS of Haldimand & Norfolk v. J.-L.J et al.*,⁵⁰ delays in child protection proceedings due to COVID-19 worked against Indigenous mothers attempting to reunite with their Afro-Indigenous children to the point of the mothers becoming frustrated. Child protection agents documented these mothers in an anti-Indigenous manner, which was the used against these Indigenous mothers in court.

AGING OUT

On January 5th, 2022, TVO released an article which presented statistical research regarding child welfare survivors aging-out of the system during the pandemic.⁵¹ The article stated that 560 child welfare survivors who age-out each year do not finish high school and become trapped in precarious work options.⁵²

The article also indicated that many of these child welfare survivors who age-out are forced to rely on social assistance, and 460 child welfare survivors under state guardianship currently experience criminalization.⁵³

The article also noted that there were no specific changes with respect to the aging-out experience other than the moratorium and announcements indicated above.⁵⁴

⁴⁹ 2021 ONCJ 414.

⁵⁰ 2021 ONSC 5465.

⁵¹ Linda Mussell & Marsha Rampersaud, "The high costs of 'aging out' of foster care in Ontario", TVO Today (2022) online: <www.tvo.org>.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

CROSS-OVER INTO THE CRIMINAL PUNISHMENT SYSTEM

As indicated above, Black child welfare survivors are likely to be targeted by the state in many ways, including the criminal punishment system. In the case of *R v Groves-Bennett*, a 22-year-old Black Disabled child welfare survivor dealt with issues with respect to sentencing.⁵⁵

Groves-Bennet experienced a lack of support with respect to mental health, and food and housing insecurity throughout his life as a child welfare survivor. Leading up to encountering the criminal punishment system, Groves-Bennet lived off of the meager supports provided by the Ontario Disability Support Program ("ODSP").⁵⁷ As a result of this, Groves-Bennet was forced into the position of having to steal to survive, leading to his arrest.⁵⁸

At the time of this case, Groves-Bennet had been on three years of presentence incarceration and was subject to 142 days of full or partial lockdowns due to staff shortages, and other harsh conditions imposed solely by the pandemic and by no fault of his own.⁵⁹ Groves-Bennet reported to his lawyer there were not any enhanced protocols for minimizing the risk of COVID-19 in the jail the state incarcerated him.⁶⁰

Even the judge noted that it was difficult to determine how to minimize Groves-Bennet's sentence given his pre-trial detention when it was obvious he would be subject to harsher conditions as a result of the state's neglect of those incarcerated in prisons and jails during COVID-19.⁶¹

⁵⁵ *R v Groves-Bennett*, 2021 ONSC 3178.

⁵⁶ *Ibid* at para 16.

⁵⁷ *Ibid* at para 47.

⁵⁸ *Ibid*.

⁵⁹ *Ibid* at para 64.

⁶⁰ *Ibid* at para 65.

⁶¹ *Ibid* at para 67.

However, despite the judge making some acknowledgements with respect to Groves-Bennet’s social context of surviving the child welfare system and being pushed into various forms of precarity, when it came to the judge’s decision on sentencing these factors were barely considered.

In the case of *R v Z.C.*, the state charged a 19-year-old Black child welfare survivor with complex trauma under the *Youth Criminal Justice Act*, and sentenced him during COVID-19.⁶² The Crown charged Z.C. for a chain of 17 robberies which occurred over a period of 8 days when he was 16 years of age and was a Crown Ward in CAS care.⁶³ He spent almost three years in pre-sentence custody before being sentenced.⁶⁴ At the time of the robberies, the Z.C. fled a group home to which he had been assigned by CAS and was therefore houseless.⁶⁵

The judge did extensively review and analyze Z.C.’s extensive history of trauma, experiences of anti-Black racism in child welfare, and mental health diagnoses in deciding that Z.C. would be sentenced under the *Youth Criminal Justice Act*.⁶⁶ However, despite Z.C. having already completed four years in pre-sentence custody and the judge acknowledging the extensive trauma Z.C. grew up with—including surviving child welfare—the judge still decided to sentence Z.C. to custody and supervision for three years.⁶⁷

As well, there was the significant issue that Z.C. immigrated to Canada from Grenada at the age of three-years-old and now faces collateral immigration consequences because of these charges and sentencing.⁶⁸ The judge commented on the fact that Z.C. had been taken by CAS for over

⁶² *R v Z.C.*, 2020 ONSC 5999 at para 7.

⁶³ *Ibid* at para 3.

⁶⁴ *Ibid* at para 46.

⁶⁵ *Ibid* at para 181(e).

⁶⁶ *Ibid*.

⁶⁷ *Ibid* at para 201.

⁶⁸ *Ibid* at para 49.

ten years and had been a Crown Ward for most of those years, yet CAS never pursued his citizenship.⁶⁹ Despite Justice Kurz attempting to give an analysis on whether Z.C. would be deported, the Crown themselves said Z.C. would likely be deported.⁷⁰

The implications of Z.C. being incarcerated and sentenced during COVID-19 were not addressed in the case except a one note from the judge, "One additional factor that I may consider is the fact that Z.C. has been incarcerated during a pandemic, however, as the defense has not raised the issue nor adduced any evidence about it, I give it no effect".⁷¹

⁶⁹ *Ibid* at para 183.

⁷⁰ *Ibid* 184.

⁷¹ *Ibid*.

Section 5: Methodology

The methodology for this research project is interpretive phenomenology. Interpretive phenomenology recognizes that different people perceive the world in different ways and seeks to explore, understand, and make sense of subjective meanings of events, experiences, and/or states.⁷²

It understands that this meaning making work cannot be done without the interpretive work of the researcher and thinks about the cognitive/emotional aspects of interpretation. The main methods for interpretive phenomenology are surveys and interviews.

Methodologically, this study aligns with critical race theory ("CRT"). Derrick Bell, one of the Black legal scholars to birth and develop CRT describes CRT as,

...a body of legal scholarship, now about a decade old a majority of whose members are both existentially people of color and ideologically committed to the struggle against racism, particularly as institutionalized in and by law...Critical race theory writing and lecturing is characterized by frequent use of the first person, storytelling, narrative, allegory, interdisciplinary treatment of law, and the unapologetic use of creativity.⁷³

As a methodology, CRT disrupts liberal agendas and takes a critical stance towards/against rights-based scholarship and organizing.⁷⁴ This includes exposing how institutionalized standards uphold white supremacy.⁷⁵

⁷² Smith, J. A., & Osborn, M. (2004). Interpretative phenomenological analysis. *Doing social psychology research*, 229-254.

⁷³ Derrick Bell, "Who's Afraid of Critical Race Theory" (1995) 1995:4 U Ill Law Rev 893 at 899.

⁷⁴ *Ibid* at 900.

⁷⁵ *Ibid* at 900.

CRT starts from the fundamental position that our world is socially constructed by race and through racism.⁷⁶ It challenges the practices of abstraction often deployed to maintain white supremacy and racism, such as notions of objectivity, rationality, and neutrality.⁷⁷ As a challenge against abstraction and notions of objectivity, CRT uses the position of racial marginality and the personal experiences.

RECRUITMENT, SAMPLING, AND CHALLENGES DUE TO COVID-19

All participants had to be above the age of 18 years-old, and in the initial submission to the Research Ethics Board the intention was to have the following research participant pools:

- 20 survey respondents who fell under the Professional class, whereby the respondent worked in a child protection-related service, agency, organization, and/or court;
- 15-25 Black child welfare survivor respondents are necessary. Since the survey questions are limited more so to the impact of COVID-19 from their point of view, rather than their personal histories with child protection, we anticipate that we will achieve saturation with this number;
- 15-25 responses from Black families/adult carers.

It was difficult to ascertain representativeness based on quantity, as there is no data regarding the number of professionals who work in child protection-related services, the number of Black families subject to child protection investigations/services, and the number of Black child welfare survivors.

The recruitment process primarily relied on public advertisement through the community partner, convenience, and snowball sampling. Convenience sampling refers to the process of using personal relations/networks to obtain research participants. This works in conjunction with snowball sampling, referring to the process of having potential/actual participants share the research information to recruit other possible participants.

⁷⁶ *Ibid* at 900.

⁷⁷ *Ibid* at 901.

This study partnered with the Collective of Child Welfare Survivors ("CCWS"), a project under the Black Legal Action Centre ("Centre"). CCWS is a collective run by child welfare survivors, and provides various supports primarily for Black, Indigenous, and racialized child welfare survivors and families in Ontario. The community partner circulated research advertisement materials through social media and email which directed possible participants to their website where the links to the survey could be found.

Recruitment included contacting several child welfare organizations, Black organizations, and governmental agencies that work with Black child welfare survivors, and Black families/caregivers.

However, COVID-19 presented a significant challenge for recruiting research participants. From the Principal Investigator's experience, usually recruitment would include on-the-ground recruitment in order to best connect with Black child welfare survivors and Black families/carers. Necessary COVID-19 safety measures and restrictions meant we could not have this kind of access that we normally would, where we could do on-the-ground outreach to explain the study and how to participate.

Prior to the COVID-19 pandemic, child welfare housing already placed significant restrictions on child welfare survivors' lives, especially group homes. COVID-19 exacerbates this issue because of guardians' ability to control Black child welfare survivors' access to the online world. Currently, Black child welfare survivors do not have the physical distance from their placement settings that they normally would, such as being able to go to schools or programs. It would then be in these kinds of settings that recruitment would occur.

There are also valid concerns that the move to virtual/online made various programs and services inaccessible to low-income families, which Black families are overrepresented in. As well, to be able to engage in an online survey requires a certain level of digital literacy that some within the participants pools may lack.

Another possible factor in the low response rate was the short period of time allocated to recruitment. Originally, the intended start date for recruitment and outreach was October 2021, after we submitted to the Research Ethics Board in the beginning of September 2021. However, we did not receive feedback until December 2021, and we were unable to respond to the feedback until January 2022. This caused a significant delay in conducting outreach and recruitment, which did not begin until April 2022, and we had a project deadline for July 2022.

Subsequently, the project deadline shifted to the Fall 2022 in order to engage in more recruitment. From June 2022 – August 2022, recruitment increased to other organizations and individual workers. While recruitment did secure more responses, the response rate was still low and/or there were participants whose data had to be eliminated due to ineligibility.

DATA COLLECTION METHOD

This study relied on open-ended anonymous surveys. An open-ended survey refers to surveys that allow participants to answer questions beyond “yes/no” and option questions.

Two different surveys were implemented, one for professionals such as lawyers, social workers, social service providers, and this survey was open to both Black and non-Black participants. The other survey was for Black child welfare survivors and Black families.

The surveys began with a consenting process, and once participants consented, they could move on to the rest of the survey. If at any time the participants wished to discontinue their participation, all they had to do was exit the page and their data destroyed.

The survey then continued onto basic biographical information, such as age, race, ethnicity, sexual orientation, gender, location, etc. This was to ensure that certain trends were not lost under aggregated data.

However, after reviewing the data it is possible that asking this biographical information acted as a barrier for participants. Of the 45 survey responses, 27 had to be eliminated due to participants not continuing to biographic informational stage.

One critical reflection for this project is that surveys ended up being an inappropriate method for this population/project purpose. It is also important to consider how the online world shifted attention span, where it may be that we would have received more responses if there were not biographical question or had they been more limited.

However, since biographical information is important for understanding trends, it is possible that more broadly, surveys are now an inappropriate method for research projects regarding Black child welfare survivors and Black families/caregivers. These communities are particularly precarious, where access to internet and information on why biographical information is being asked and time are limited.

It may be that if researchers wish to ascertain the experiences of Black child welfare survivors and Black families/caregivers in relation to this or other topics, we must take the time to use interviews as a primary method. Looking back, this project should have had a longer timeline to allow for issues with respect to the Research Ethics Board in order to better engage our research pools.

PARTICIPANTS

Given the low response rate and the data that had to be eliminated, this project does not consider the biographical information relevant or telling. Again, it is recommended that further research occur and with the specific use of interviews to obtain an understanding on any possible trends.

CODING, DATA ANALYSIS

In this research project, data analysis began with rereading the theoretical and literature review sections. This helped develop the language and themes when coding the data. The Principal Investigator then read each survey without coding in order to fully engage the narrative each participant provided.

The Principal Investigator then reread each survey response while coding, where the titles of the themes were grounded in the theoretical framework of the study. Subsidiary themes were then folded under broader themes. As codes became repetitive, they were folded into either a main theme, or a sub-theme.

These themes were then subject to analysis grounded in the theoretical framework and themes in the literature review. The Principal Investigator was the sole person who conducted the data analysis for the project, however the Faculty Supervisor reviewed the data analysis to ensure cohesion and clarity.

DISSEMINATION STRATEGY

The finalized report is to be shared through the community partner, to be developed into a public talk as well as remain as an open-source document.

ETHICAL AND OTHER RESEARCH CONSIDERATIONS

The level of ethical concerns and risks for this research project were considered low based on the chosen methods. One ethical concern was the issue of dual roles/relationships, where the research project relied heavily on the Principal Investigator.

The Principal Investigator is also the Executive Lead for the community partner, and meant he may encounter child welfare survivors, families, and/or child welfare actors (lawyers, social workers, community workers) whom he knew before the research. This conflict of interest is especially possible given the Principal Investigator is well-connected in child welfare work.

The concern was that this would impact anonymity and that there was an inherent power imbalance based on this dual relationship. To mitigate this, the recruitment material included the Principal Investigator and Faculty Supervisor's names so potential respondents knew who would have access to the survey responses. As well, other members of CCWS with decision-making power were notified of this concern and provided a letter to the Research Ethics Board.

There was also a concern regarding emotional/psychological harm to Black child welfare survivors and Black families caused by the survey questions, where research participants could be triggered by having to provide their individual stories. For this reason, survey questions were limited to their experiences with issues within the family justice system during COVID-19, rather than the specifics of why they were dealing with child protection, making risk is transient and temporary. The only question related to why participants are interacting with child protection is limited to a "check all that apply" rather than an open-ended question to mitigate emotional risk.

Another ethical concern related to data retention and security. While there was data security in place, it is not possible to absolutely state that there is zero risk for data breach. The Principal Investigator mitigated this by holding the Qualtrics Drive provided by the University of Windsor. This drive is password protected, and any data coding and analysis was stored in a password protected file on the Principal Investigator's hard drive. The Principal Investigator then destroyed all data upon completion of the research project.

Finally, there was a social risk, where participants' reputation could be impacted if their experiences were discernable to the reader. This was mitigated by limiting the questions in the previously stated ways.

Section 6: Data Results

While there was a low response rate with the surveys, the data provided by participants does reflect an ongoing trend of anti-Black racism within child protection, and that these experiences were exacerbated by the COVID-19 pandemic.

CHALLENGES

Professionals

For the Professionals pool there were 31 participants. While it was not required that all participants in this pool be Black, all identified themselves as such.

Of these 31 participants, 22 participants were eliminated from the study for non-completion of the survey. Specifically, they did not continue past the questions seeking biographical information. Of the remaining nine participants, four participants were from the United States, leaving the only viable data was from five participants.

Of the remaining five participants, three were in the Greater Toronto Area, one located in Barrie and the other located in Ottawa. Almost all were women, except one non-binary person, and almost all identified themselves as community workers aside from one lawyer.

When asked what the common cases they saw and worked with in their role with respect to Black people's experiences with child protection in Ontario, the results were illuminating, a reminder, and deeply concerning.

One participant mentioned cases related to mental health issues and higher rates of substance use and abuse on the part of Black child welfare survivors and noted a lack of harm reduction supplies and support for them.

Four participants noted a lack of resources, particularly those with the intention of addressing anti-Black racism and supporting Black child welfare survivors and Black families/caregivers. For example, one participant stated, “[There is a] lack of funding for programming specific to Black communities, [and] many places have roles such as anti-Black racism counsellors and then do not provide resources for this person to give support to clients.”

Another participant stated, “Lack of legal aid resources, including a lack of lawyers who understand anti-Black racism and a lack of lawyers even willing to take on complicated files.”

Three participants made direct comments with respect to COVID-19, for example, one participant noted that Black child welfare survivors were increasingly being isolated from their families, which exacerbated the kind of parental alienation Black families/caregivers already experience. This same participant noted how Black fathers were particularly affected by COVID-19 restrictions, with their access being quite limited or completely shut out.

Two participants noted how schools and neighbours played a significant role in reporting against Black families. One noted how schools were calling CAS on Black parents for naming anti-Black racism in their children’s experiences and advocating for them.

Another noted how ideas of neglect worked against Black families, where Black parents were reported on for working outside of the home while their children were home because of school closures in response to COVID-19 and a lack of resources. One participant also noted that it was their perception that reports against Black parents increased during the pandemic.

When asked what challenges they noticed to the child protection system, participants indicated that government supports are now more difficult to access, and Black clients are having to rely more on the scarce community-based resources that exist.

One participant pointed out that there weren't adequate supports for 2SLGBTQ* Black child welfare survivors. One participant who was a community worker in Toronto specifically stated, "less support and more surveillance." A lawyer located in Toronto stated, "There seems to be more awareness about [Anti-Black Racism] in the child welfare system, but in my opinion that has not resulted in meaningful change."

One community worker located in Toronto stated she never even had to deal with Black clients navigating child protection cases until the pandemic began. This works in concert with another Black community worker who stated, "I noticed that due to stay-at-home [directives], social distancing orders and a need to keep staff safe, there was a change in CAS' ability to provide adequate respite services to families in the system who benefited from this additional resource to keep their children in their care."

When asked directly how they think COVID-19 impacted Black child welfare survivors' and Black families/caregivers' experiences, they almost all spoke to the same issue. All of them spoke to issues of access to both children and relevant services. One stated, "Things like reduced hours, lack of housing, huge caseloads, and closures of community resources have made things harder."

Some pointed out significant issues related to housing and how this comes to be a reason for the theft of Black children from their families, such as a higher cost of living. One participant noted how social housing lists in cities like Toronto and regions like Durham have turned from a next-in-line approach to landlords getting to choose their tenants.

Succinctly put by a participant, "I think it has further isolated people from each other, our communities and support networks."

Black Child Welfare Survivors & Black Families/Caregivers

For participants who were Black Child Welfare Survivors and/or Black Families/Caregivers, there were 14 respondents. Of this, six participants were eliminated due to failure to complete the survey, specifically at the biographical questions. Of the remaining eight remaining participants, four were from the United States and one located in Vancouver, and therefore were eliminated.

Of the remaining participants, one was a low-income Black woman child welfare survivor placed in Continued Care and Support for Youth and located in Toronto and encountered child protection prior to the COVID-19 pandemic beginning. The other participant was a low-income Black woman family member located in Vaughan and received in-home services and encountered child protection during the COVID-19 pandemic.

While this is very limited data, the two remaining participants spoke to very similar challenges named by Black workers/system actors while also directly naming the kind of harms, violence, and anti-Black racism they experienced.

When asked their experiences in dealing with family court and/or child protection services during the pandemic, the Black child welfare survivor indicated that she experienced confinement within her transitional living home. She also indicated that through living in such a space, she had limited access to Wi-Fi to find employment, attend school, and connect with community and family.

The Black child welfare survivor indicated that COVID-19 restrictions put a limit on being able to access workers on-site, which resulted in her not getting the space to articulate her wants and needs. For the Black family member, she indicated that it was extremely difficult to have child protection agents listen to what she said in terms of the investigation and service provision.

When asked whether the underlying issues that brought them to interacting with child protection were resolved, both participants said no.

CHANGES

Both participant pools were asked what changes, if any, they would recommend to better support Black child welfare survivors and Black families/caregivers both in/outside of the COVID-19 pandemic.

Every single participant pointed to the need for more culturally relevant services for Black people, services that are well-funded and well-staffed, and the need for long-term therapeutic support for clients.

Another interesting trend was that all participants mentioned the reality that Black child welfare survivors and Black families/caregivers should seek support from community-based groups and advocates to receive better support. The Black child welfare participant stated plainly, "lean on support from trusted friends or family who uplift you."

One participant, a Black community worker, said that child protection agents should link Black clients to resources outside of Societies given how problematic Societies are internally. Another Black child welfare community worker stated that the state needs to address both the best interest of the child AND the family.

Another Black community worker stated, "Ways to support community outside of the child welfare system; e.g. how to support parents who are struggling, or children who are not safe at home, outside of the CAS system as it perpetuates harm and system oppression."

One Black community worker stated, "I would like services without barriers, the ability to give clients basic needs and money for things outside of their basic needs without extreme surveillance." Similarly, another Black community worker stated, "More access to resources and support from services that won't further victimize them."

Two participants raised recommendations with respect to the presence of Black child protection agents in CAS. One Black community worker stated, "I would like for programs or roles that are dedicated to [Anti-Black Racism] to be more than just the name of a role or program, but to be intentional about how funding is not the same as it is in other programs within agencies."

The other participant, a Black lawyer, stated, "Culturally (Black) appropriate services – facilitate by Black people who care/love Black people."

REFLECTIONS FROM THE RESEARCHER/COMMUNITY WORKER (JOSH LAMERS)

CHALLENGES

For the past two years I had the opportunity to co-lead the Collective of Child Welfare Survivors (“CCWS”) alongside other Black and racialized child welfare survivors. One aspect of my role has been to provide individual advocacy services for Black, Indigenous, and racialized child welfare survivors and families navigating and interacting with child protection.

Publicly launching in September 2021 has been an interesting time—to say the least—in witnessing the kinds of cases that come our way during the COVID-19 pandemic when we also witnessed a short cultural cry against anti-Black racism and a commitment to address Black people’s experiences from agencies like CAS in 2020 and early 2021. The proof is in the countless “Anti-Racism Strategy” pages on most CAS’ pages in this province.

Across all cases, COVID-19 caused some sort of delay. Whether that was a referral, a child placement, and/or court proceeding, these delays exacerbated the situation. Children and youth would be separated from their families while CAS would provide little relevant services to the caregiver(s) in order for the child(ren) to be returned. In all cases, this put a strain on the child-parent relationship, meanwhile CAS would place the blame almost entirely on the parent until CCWS intervened to point out that the child protection workers ignored their standards, duties, and announced commitments with respect to anti-Black racism.

A significant number of the cases CCWS worked on have been Black mothers targeted by the state, for the same reasons outlined by the participants. Almost all were also child welfare survivors in some way.

One trend that I noticed is that all of them were put under investigations that were prolonged despite evidence that proved against verifications of neglect and/or abuse. Clients would provide evidence, and often the predominantly white women child protection agents would ignore this evidence, seemingly waiting to hear from judges or police. This is particularly problematic because child protection agents are meant to notify clients if/when an investigation is a joint investigation with police.

Some Black mothers had their children apprehended for years (apprehension occurring prior to the pandemic) and still hadn't received a verification of neglect and/or abuse, yet the agency continued to withhold the child.

In almost every single case, Black mothers raised the issue of not even receiving a Service Plan for months, and even a year, after the initial interaction with child protection. This is despite the legislation which states a Service Plan must be provided within 30 days. One had to go as far as seeking political support from municipal government actors to get her Service Plan.

Every single case, except one, had a white woman social worker. When asked what kinds of considerations they made with respect to anti-Black racism and Blackness during their investigations and developing a Service Plan, all of them said they didn't make these considerations. This is even though some identified having taken One Vision One Voice training sessions, and an awareness of their agency's Anti-Racism Strategy.

A common excuse made by these white women agents was that they did not know of any Black resources to be able to add them to the Service Plan. Another trend I noticed with respect to Service Plans was the constant addition of "mental health concerns" where it was put on the Black mother to find mental health resources and support. However, more specifically the white women child protection agents were asking these Black mothers to get a psychological assessment, which is something that is quite dangerous in Black people's lives. Especially if these white women child protection agents were only referring these Black mothers to white psychologists/psychiatrists, who would then provide documents that go to court.

When I raised this as a concern to the worker, all the Black mothers also pointed out that their mental health was an issue due to either the socioeconomic conditions they were forced into (lack of housing, dwindling employment, etc.), or because of their experiences of the child protection investigations/service provision. All of them stated that the white women social agents would ignore their concerns related to the investigation/service provision and would document and call the Black mothers "aggressive" or "non-compliant."

In some of the cases, some of the Black mothers were engaged to the Black father of the child. These mothers complained that the white child protection agents targeted and relied on the Black mothers with very little communication to the Black fathers. As well, the Black mothers told me that when they told the white women child protection agents they were engaged, the agents were “shocked” and would ask to see the engagement ring.

Another issue that I came across was the reality that Black child protection agents assigned to my cases were pushing back against Black advocacy organizations, including CCWS. In some cases, the very Black child protection agents hired to help better support Black clients were ignoring Black clients’ requests for Black services and supports. Some Black child protection agents even went as far as refusing to answer emails and attend meetings with Black advocacy groups and persons such as myself.

As well, I noticed an issue with respect to the surge of “Equity, Diversity, and Inclusion” rhetoric within Societies, where the same people acting as EDI consultants were also hired in positions within the Society that arguably compromised their role. For example, a Director of Service Delivery also acted as an “EDI consultant” within the agency, when it can be argued that the role of the consultant is to challenge the service being provided.

Despite the obvious overwhelm of child protection processes, every single Black mother navigated their experiences without a lawyer, or they had a family lawyer who did not care to address the anti-Blackness operating in the case.

This includes the Office of the Children’s Lawyer (“OCL”), where OCL lawyers ignored issues of anti-Black racism in their case and often used the child’s voice against the Black parent who either pointed out the anti-Black racism in the case or called for their child to receive culturally relevant services. In some cases, Black mothers were not engaged—or were engaged last minute—by OCL lawyers when the OCL lawyer produced their reports for the court.

Finally, in cases where Black mothers had to deal with court, both CAS and the lawyers from the Office of the Children’s Lawyers gave documentation and/or evidence to the Black mothers very last minute—including just days before having to go to court. This left Black mothers unprepared to make full submissions in court, where they were then subject to judges’ determinations that made their circumstances worse.

As well, some mothers made complaints to the Ontario Ombudsman, and while their complaints were validated they were told the Ombudsman lacked any enforcement power.

CHANGES

In all honesty, I am not one to suggest changes to a system—child “protection”—that is so obviously antagonistic and orchestrated against Black people. However, it is clear that Black community-based resources are fundamental to the direction of a case. Every single case I worked on turned around the moment the clients came to CCWS, because we were able to get them a Service Plan that was relevant and provided the appropriate services. This included getting them legal representation from Black lawyers who were well-versed in anti-Black racism, cared to challenge CAS in/outside of court, and even were willing to challenge OCL lawyers and judges.

Therefore, I think CAS should implement a policy where individual child protection agents have to identify in the Society’s internal system (CPIN) the race of the client. Then, the child protection worker should have to indicate that they notified the Black client of culturally relevant services, using a list of resources that would be handed to the client, this is for both the child and the family member/caregiver. This should include Black advocacy resources, like CCWS or other organizations.

This would at the very least put the Society in the position of being aware that they have this responsibility and would be further proof to whether the child protection worker is, in fact, making considerations with respect to race.

Section 7: Discussion & Going Forward

This section synthesizes and critically analyzes the themes found in both the data and the literature review, illuminating what appears to be a continued anti-Black systemic assault on and disavowal of Black families and Black child welfare survivors, including Black advocacy groups supporting them in Ontario's child protection system.

Throughout the literature and data provided, it is clear the health, social, legal, and economic conditions inaugurated by COVID-19 turned this virus into a carceral condition for Black child welfare survivors and Black families/caregivers. Many participants spoke about containment, isolation, and increased surveillance—all aspects of carcerality, and justified keeping Black and Afro-Indigenous children in sites known to be anti-Black and dangerous.

When we look at the literature, there is significant and overwhelming reason to be concerned about the rates at which Black child welfare survivors contracted COVID-19, any COVID-19-related deaths, and vaccination rates. Despite the government not providing any of this information, based on the outbreaks in other carceral settings—including long-term care facilities—it would be reasonable to assume there were outbreaks in foster and group facilities in child protection.

COVID-19 became a reason for CAS to withhold Black child welfare survivors from their families, where familial relationships unraveled because Black parents/caregivers were not able to access their children to move towards reunification. At the same time, child protection agents refusing or ignoring their mandate to provide culturally relevant services exacerbated this issue because the alleged underlying issues that brought about the case were not being resolved.

This, in effect, traps the Black parents into engaging anti-Black services that may—and often do—make negative reports against Black parents/caregivers. This includes referring Black child welfare survivors to inappropriate services that don't know how to properly assess Black children/youth from a lens grounded in Blackness.

The data provided by Black community workers and lawyers directs attention to the ongoing anti-Black systemic neglect of Black people dealing with child protection, which further pushes Black child welfare survivors and Black families/caregivers towards these anti-Black services.

It is also important to highlight the anti-Black sanism and misogynoir in the ways in which child protection agents and judges spoke about and made decisions in these cases. Black mothers were constructed as 'mad' rather than empathized with given the context of having deputized white and non-white women in their homes unannounced. When advocating for themselves, child protection agents quickly slid into calling this aggressive to justify saying these Black mothers had mental health issues.

As well, in targeting Black mothers CAS seem to not take the presence of Black fathers seriously and made anti-Black attempts to rupture Black fathers' relationships with their children.

The fact that government agencies seem to be choosing to withhold documentation and evidence from Black families/caregivers is egregious, damaging to the lives of these Black families, and jeopardizes their relationships to one another.

When looking at the cases found, judges are ambivalent towards the social context of Black child welfare survivors, making benign and ultimately half-hearted acknowledgments with respect to Black child welfare survivors' histories of trauma that were a direct result of the very state that judges represent.

Given Black child welfare survivors already conflate and view group homes as prisons,⁷⁸ we can also assume that these spaces became more carceral and restrictive under COVID-19.

⁷⁸ *Supra* note 2.

We should be asking ourselves what may have happened, or be happening, to Black child welfare survivors if/when we say “Black lives matter” in these spaces. Especially when the data shows Black and Afro-Indigenous children will still be held in the guardianship of those known or identified as anti-Black “caregivers.”

We also have no clear picture on how this precarity impacted Black child welfare survivors’ sexual and reproductive health, and resources related to sexuality and gender expression/identity.

Considering the pre-existing socioeconomic outcomes and realities of Black child welfare survivors, we can anticipate that Black child welfare survivors will continue to be overrepresented across carceral systems. It appears from that data that we can also anticipate a lack of legal empathy for Black child welfare survivors’ experiences, and this exacerbates the violences of child protection that are increasingly pushing Black child welfare survivors in view of carceral systems, especially through poverty.

This can be seen in the reports on the uses of restraints and serious incident reports, and in the cases where Black child welfare survivors were charged for essentially trying to navigate the poverty they were forced into.

Those legally tasked with advocating for Black child welfare survivors and Black families/caregivers are failing to do so and seem to be playing a role in the anti-Black systemic neglect within child protection. Repeatedly, data showed Black clients are being ignored in the issues they raise, and lawyers from the OCL or paid through the LAO certificate system seem to either fear addressing anti-Black racism or consider it unimportant/irrelevant.

What is striking though is the fact that there has been an increase of funding directed towards addressing anti-Black racism within Societies in Ontario. Yet, it appears that these resources/roles are performative and ineffective, and Black communities operating outside of Societies clearly know this and do not trust these units and agents—rightfully so.

It is deeply concerning that participants from both research pools stated that Black child protection agents hired to deal with anti-Black racism were in fact actively participating in it. If anything, this puts to rest calls for a Black Children's Aid Society. At the end of the day, the same laws and policies apply across agencies and the participants' narratives show this.

To paraphrase one of the participants, it does not seem to be—in some of these participants' experiences—that they experience love and care from Black CAS agents and directors.

It is particularly illuminating that all participants referenced relying on Black communities outside of Societies to support them in dealing with child protection. It appears from the data that non-CAS Black advocacy groups effect significant change for Black child welfare survivors and Black families/caregivers.

It may be for this reason we are beginning to see a kind of backlash when Black child welfare survivors, Black families/caregivers, and Black advocacy groups challenge child protection investigations and service provision. It is deeply concerning that Black advocacy groups are being pushed out and ignored when CAS' Anti-Racism Strategies often list working with system experts and grassroots organization as a commitment to addressing anti-Black racism.

It is without question that Ontario's child welfare system is not meeting its low standard of promoting the best interest of Black children. It appears this system continues to leave Black lives in ruin and the COVID-19 pandemic is making more rubble out of Black families. Calls for more funding to support anti-Black racism initiatives, while well-meaning, appear to be a lost cause when the few that exist are either ineffective or antagonistic.

However, the other side of the data is Black resistance. It appears Societies are antagonistic towards the fact that Black people outside of the system can effect change with those trapped in child protection. This means that readers of this study need to take seriously their role in connecting Black child welfare survivors and Black families/caregivers to organizations like the Collective of Child Welfare Survivors, the Black Legal Action Centre, and Parents of Black Children.

It is unfortunate Black people must be wary of offices tasked with our well-being, however we can also look to what is working outside of government agencies. We are what keeps us well.

We need to seriously and rigorously engage in mutual-aid networks to better support Black child welfare survivors/families dealing with the socioeconomic realities that lead to and justified CAS targeting them in the first place, and to address the after-effects of these interactions.

We need to build and better implement abolitionist processes to navigate issues of conflict and violence amongst Black families. This includes providing donations, funding, resources, and other forms of support to Black advocacy groups who are already intervening and effectively challenging the anti-Blackness in these cases. This means these groups working together against the current state of affairs in order to build an abolitionist movement against child welfare and in service of Black lives.

The goal should not be about knocking on the door of the burning house, but rather building better structures and futures for Black children and families.

Appendix A: Survey for Professionals

- 1 What is your race? (Open-ended question)
- 2 What is your ethnicity? (Ethnicity refers to your cultural background, such as Jamaican, Haitian, etc.) (Open-ended question)
- 3 What is your sexual orientation? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 4 What is your gender? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 5 Are you a part of the Disability community, and if so please describe your disability if you're willing? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 6 What city do you live in? (Open-ended question)
- 7 What is your role as a professional when it comes to child welfare? (Multiple Choice)
 - a. Lawyer
 - b. Social Worker
 - c. Community Support
- 8 What are common cases you are seeing and working with in your role when it comes to child protection and supporting Black child welfare survivors and Black families/adult carers during COVID-19? (Open-ended question)
- 9 What changes have you noticed and experienced with the family justice system and child protection-related services during COVID-19? (Open-ended question)
- 10 How do you think COVID-19's impact on the family justice system and child protection-related services effects Black child welfare survivors and Black families/adult carers? (Open-ended question)
- 11 What changes, if any, would you recommend to better support Black child welfare survivors and Black families/adult carers dealing with child protection BOTH in/out of the pandemic? (Open-ended question)

Appendix B: Survey for Black Child Welfare Survivors & Black Families/Caregivers

- 1 Are you a Black child welfare survivor and/or Black family member/adult carer? Select all that apply.
- 2 What is your race? (Open-ended question)
- 3 What is your ethnicity? (Ethnicity refers to your cultural background, such as Jamaican, Haitian, etc.) (Open-ended question)
- 4 What is your sexual orientation? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 5 What is your gender? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 6 Are you a part of the Disability community, and if so please describe your disability if you're willing? (Type "rather not say" if you don't want to answer) (Open-ended question)
- 7 What city do you live in? (Open-ended question)
- 8 How would you describe your financial situation? Ex: low-income, etc. (Type "rather not say" if you don't want to answer) (Open-ended question)
- 9 What is your living situation? Ex: homeowner, renting, social housing, shelter (Type "rather not say" if you don't want to answer) (Open-ended question)

10

What reason are you dealing with child protection during COVID-19?

Select all that apply

- a. Apprehension (placement in kinship home, foster home, group home)
- b. Adoption
- c. In-home services (child protection worker visits)
- d. Aging-out of child welfare
- e. Continued Care and Support for Youth
- f. Family reunification (placement back into family/adult carer home or attempting to find birth family)

11

When did you first interact with child protection? (Multiple choice)

- a. Before the pandemic
- b. During the pandemic

12

What are your experiences in dealing with family court and/or child protection services during the pandemic?

13

While interacting with the family court system, children's aid society, and/or child protection-related services, has the reason why you interacted with these spaces resolved?

14

What is your gender? (Type "rather not say" if you don't want to answer) (Open-end) What changes, if any, would you recommend to better support Black child welfare survivors and Black families/adult carers dealing with child protection BOTH in/out of the pandemic?

Appendix C: Recruitment Script

In a recent article released by Global News where it was found that over 2000 restraints occurred in group homes over a period of one year during the pandemic, as well as over 10,000 serious incident reports. However, the journalists for the story completely neglected to mention any Black person's experience or address anti-Black racism as a part of these statistics.

In light of this, the Collective of Child Welfare Survivors is going to continue collecting participant surveys for the province-wide study titled *The Forgotten Ones: The Impact of COVID-19 on Black Families and Black Child Welfare Survivors Dealing with Child Protection*. The study explores the impact of COVID-19 on the family justice system and the experiences of Black child welfare survivors and Black families/adult carers dealing child protection in Ontario during the pandemic.

It is very clear that it is imperative that we get an understanding of what is happening for Black child welfare survivors and Black families dealing with child protection over the pandemic. Please participate if you fall under the below research pools and please share! It only takes 10 minutes maximum to fill out!

We are looking for Black child welfare survivors and Black families/carers who are 18+ to participate. We are also looking for professionals (lawyers, social workers, community workers, etc.) supporting Black child welfare survivors and Black families/carers dealing with child protection in Ontario.

I am contacting you to see if you might be interested in participating in the study through a completely anonymous survey. There are two separate surveys: to participate in the study;

1 Survey for Professionals: <https://forms.gle/Me67L6YoUGnsTGvv9>

2 Survey for Black Child Welfare Survivors/Families/Carers: <https://forms.gle/FCwK7kRhbyG4thfeA>

If you have any questions about the survey, please contact us at **abrchildwelfare@gmail.com**

Your participation is completely voluntary and if you choose not to participate it will not impact our relationship, or your relationship with the University of Windsor or the community partners.

If you would like more information, please visit **www.collectiveofcws.ca** or email **abrchildwelfare@gmail.com**

Appendix D: Recruitment Poster

DESIGNED BY WINNIE ZHANG
(WINNIEZHANGDESIGN@GMAIL.COM)



RESEARCH PARTICIPANTS NEEDED

The Forgotten Ones: The Impact of COVID-19 on Black Families and Black Child Welfare Survivors Dealing with Child Protection

We are looking for participants who are:

- Professionals (lawyer, social worker, community worker)
- Black child welfare survivors, Black family members/adult carers who are 18+
- Who have dealt with child protection during the pandemic

Josh Lamers (Principal Investigator & Executive Lead of CCWS), in partnership with the Collective of Child Welfare Survivors, is conducting a study on the impact of COVID-19 on Black child welfare survivors and Black Families/adult carers experiences with child protection.

VISIT THE LINK IN OUR BIO

This is a completely voluntary and anonymous survey.
This study has been reviewed and cleared by the University of Windsor Research Ethics Board (REB#: 21-172)

Principal Investigator:
Josh Lamers (he/him)
Faculty Supervisor:
Dr. Vasanthi Venkatesh (she/her)