

MAKING WAVES

**ENSURING CHILDREN BENEFIT
FROM CHILD SUPPORT PAYMENTS**

The Office of the Child and Youth Advocate

May 2018



CHILDREN YOUTH
NEWFOUNDLAND & LABRADOR

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Message from the Child and Youth Advocate

As Newfoundland and Labrador’s Child and Youth Advocate, I have the privilege of serving young people. Through the *Child and Youth Advocate Act*, I am mandated to advocate for child and youth rights. This may involve individual advocacy, exploring and addressing systemic issues affecting larger groups of young people, conducting reviews and investigations into particular cases and issues, and providing public education.



This review is systemic in nature because it impacts a large group of young people. And it serves a public education function because it will explore an issue that many may not be aware. This special report deals with the practice of recovering the value of child support payments from Income Support benefits. So rather than serve to provide additional benefits for children, child support payments, in essence, are converted to income to support the basic cost of living for the family. For children growing up in poverty, every effort must be made to help break the cycle of poverty, to enable them to see opportunity and hope in their future, and very importantly to enable them to live with dignity as participating members of our communities.

I believe the existing policy is the result of years of “past practice”. I do not believe there is any intention to do ill to these vulnerable children. However with this conversation initiated, I believe there is an opportunity to do things differently. I believe Newfoundland and Labrador can and must step forward in advancing progressive public policy to advance the rights and interests of children and youth.

A handwritten signature in black ink that reads "Jacqueline Lake Kavanagh". The signature is fluid and cursive, with a large flourish at the end.

**Jacqueline Lake Kavanagh MSW, RSW
Child and Youth Advocate**



Table of Contents

Issue	2
Review Process	2
Jurisdictional Scan	3
Children’s Rights	4
Scope of the Issue	6
Child Poverty	9
Analysis/Recommendations	12
Conclusion	12
References	13

Issue

The recovery of child support payments from Income Support recipients has emerged as a current issue in Canada. Presently, there are variations across the country in how Income Support policies treat child support payments. In Newfoundland and Labrador, every dollar of child support that someone on Income Support receives is recovered dollar for dollar from their Income Support by the Government of Newfoundland and Labrador. This means that money one parent pays and which is intended to be allocated for the child(ren), actually reduces an equal amount that government pays to the custodial parent for the family's basic costs of living. The Office of the Child and Youth Advocate pursued this issue as a systemic review, and not as an investigation based on any individual complaints. This Review examines the practice of recovering child support amounts from Income Support entitlement within a context of emerging trends throughout the country, and the experience of child poverty in Newfoundland and Labrador. This report explains our findings, analysis and recommends change.

The Department of Advanced Education, Skills and Labour (AESL) is responsible for the administration of Income Support Program benefits in Newfoundland and Labrador. These benefits assist eligible low income individuals with meeting their daily living expenses such as food and shelter. (Newfoundland and Labrador Department of Advanced Education, Skills and Labour, 2017). Current AESL policy treats child support payments as “non-exempt income” (income) according to the Income and Employment Support Policy and Procedure Manual (AESL, 2017). There is a growing dialogue criticizing such policies as regressive and infringing on the rights of children to benefit from the support of both parents (Khanna, 2017).

Review Process

In examining this issue, the Office of the Child and Youth Advocate approached and received the full cooperation of the Department of Advanced Education, Skills and Labour (AESL) as well as the Department of Justice and Public Safety (JPS). The responses to our questions and requests were focused and very helpful in enabling a better understanding and a timely conclusion to this Review. The Review process included an analysis of current policies, operational directives and statistics related to Income Support and child support payments for the Income Support Division of AESL, and the Support Enforcement Division of the Department of Justice and Public Safety (JPS). A jurisdictional scan provided information on how other provinces and territories treat child support payments for those receiving Income Support. A legal review identified relevant cases and decisions to contribute to this discussion.

Jurisdictional Scan

Policies differ across the country regarding whether child support is considered income when Income Support is calculated. Calls for action from single parents and anti-poverty advocates have given rise to legal challenges demanding an end to the treatment of child support as income. In Manitoba, this issue is the subject of class action lawsuit with a goal of giving child support payments back to children (Thorpe, 2017). Similarly, a 2015 class action lawsuit filed in Ontario against the Ontario Ministry of Community and Social Services (Nicoll, 2015) cited this policy as a human rights issue. The British Columbia government was also challenged to defend its policy of clawing back child support payments when a notice of civil claim was filed against the government in 2014 arguing that this policy was unfair (MacLeod, 2014) and violated equality rights under the Charter of Rights and Freedoms. Meanwhile in Alberta, a single parent has launched a human rights complaint against the Ministry of Social Services on the grounds of family status and source of income (Nicoll, 2015).

Changes have recently occurred in some Canadian jurisdictions. Currently three jurisdictions no longer treat child support payments as family income. British Columbia was the first to change this policy in 2015, with Ontario, and Northwest Territories following in 2016 (Khanna, 2017). Child support payments became fully exempt in Ontario in early 2017 as part of the province's effort to combat poverty. In explaining its rationale, the Ontario government indicated that parents who owe support are more likely to pay if they know the child support payments will benefit the children (Ontario Ministry of Community and Social Services, 2016). In Quebec, single parents in receipt of social assistance are able to maintain \$110 per month/ per child as exempted income (Travail, Emploi et Solidarite Sociale Quebec, 2017). Additionally, the Government of Nova Scotia announced in its intent in Budget 2018-19 to fully exempt child support payments from income assistance calculations (Government of Nova Scotia, 2018).

In Ontario, British Columbia, and the Northwest Territories where the practice of recovering child support payments has ceased, there has been no significant change in the practices of Support Enforcement programs. Operational budgets have remained the same, with no change in practices or staff complements. Child support payments are still collected on behalf of custodial parents and disbursed directly to the beneficiaries (Personal Communications, 2017). In Newfoundland and Labrador, the Support Enforcement Program of JPS collects and distributes approximately \$41million annually. Approximately \$5 million of this amount is directed to those receiving Income Support, and from whom AESL recovers the equivalent amount in Income Support benefits.

Children's Rights

The rights of children globally are enshrined in the United Nations *Convention on the Rights of the Child* (UNCRC) (1989), which was ratified by Canada in 1991 and embraced around the world. The UNCRC must serve as a beacon and guide the development of public policy that will enhance and protect the rights and well-being of children. Specifically, Article 3 of the UNCRC requires that the best interest of the child shall be the primary consideration in all actions concerning children. Other Articles, specifically Article 24 and Article 27 address a child's right to the best

**Article 3 UNCRC:
Best Interest of the Child**

In all actions concerning children, the best interests of the child shall be a primary consideration.

health care possible, nutritious food, clean safe environments, and an adequate standard of living to meet physical, mental, spiritual, moral and social development needs (UNCRC). The Office of the Child and Youth Advocate believes that the policy of clawing back child support payments from Income Support recipients disadvantages children whose parent receives Income Support and further contributes to child poverty.

The Government of Canada recognizes that children need the financial support of their parents and that the children have a “legal right to child support” (Government of Canada, Department of Justice, 2017). In Newfoundland and Labrador, the *Family Law Act, 1990* also recognizes this obligation. Historically, child support payments were considered to be taxable income under federal tax rules that pre-dated amendments that came into effect May 1, 1997. This represented a key area of change in child support guidelines, a change that was rooted in a “rights based” approach for children in recognition of the right of children to be financially supported by both parents. These new rules meant that child support payments were no longer taxed as income (Government of Canada, Department of Finance, 2000). Additionally, a Supreme Court of Canada decision recognized that child support is the right of the child (*D.B.S. v. S.R.G.*; 2006 SCC 37). This decision is an endorsement of the core principle underpinning the contemporary approach to child support: that child support is the right of the child. According to Bastarache, J. of the Supreme Court of Canada, at paragraph 38 of *D.B.S. v. S.R. G.*, “These core principles animate the support obligations that parents have towards their children. They include: child support is the right of the child...”, and at paragraph 60: “No child support analysis should ever lose sight of the fact that support is the right of the child....” In accordance with this direction set by the Supreme Court of Canada, the Newfoundland and Labra-

**Article 24 UNCRC
Children's Right to Health
and Health Services**

Children have the right to the enjoyment of the highest attainable standard of health.

dor Court of Appeal has similarly adopted the core principle that child support is the right of the child. In *B.W. v. J.G.*, 2014 NLCA 5 at paragraph 55 this principle is acknowledged: “Child support is the right of the child. To my mind, both parents are obliged to support their children insofar as they are able, and it is not for one parent to give up the child’s right to support...” In paragraph 7 of *Shears v. Gould*, 2014 NLCA50, another decision from the Newfoundland and Labrador Court of Appeal further echoed this principle: “...the obligation of the parents to provide appropriate child support on the principle that support is the right of the child...”

The Government of Newfoundland and Labrador’s current policy treats child support payments as income when calculating eligibility for Income Support benefits. This does not align with the 1997 federal tax amendments, which ordered that child support no longer be taxed as income to the recipient (Government of Canada, Department of Finance, 2000). Furthermore, it is argued that this practice is not in keeping with the principle that child support is the right of the child which has been upheld as a core principle by the Supreme Court of Canada and the Newfoundland and Labrador Court of Appeal.

**Article 27 UNCRC:
Child’s Right to an Adequate
Standard of Living**

Children have the right to a standard of living adequate to the child’s physical, mental, spiritual, moral and social development.



Scope of the Issue

To better understand and analyze the situation in Newfoundland and Labrador, specific information and statistics were requested of the departments of AESL and JPS. For the 24 month period from October 1, 2015 to September 30, 2017, AESL provided the following information:

- 2,588 families who received Income Support had child support payments recovered;
- Of these 2,588 families, the head of household was female in 2,580 cases, and the head of the household was male in eight cases;
- 12,243 dependent children resided in families in receipt of Income Support;
- \$10.7 million was recovered from child support payments during the 24 month period;
- The average monthly child support payment was \$286.13;

The average monthly child support payment was \$286.13.

JPS provided the following information:

- The Support Enforcement Division collected and disbursed \$40,776,429 for fiscal year ending March 31, 2016; and \$41,057,840 for fiscal year ending March 31, 2017.

This information clearly shows that this is a gendered concern that overwhelmingly affects single mothers and their children. While the average amount of child support of \$286.13 per month may seem insignificant to some, it is extremely important for those living in poverty or on the margins. Specifically this additional money can be used for the direct benefit of children, for example, by providing for:

- Nutritious food;
- Clothing;
- Medical care and expenses not currently covered i.e.; medical supplies, equipment and transportation;
- Dental care not currently covered by existing programs; and
- Participation in school and community extra-curricular programs and sports activities.

Currently AESL provides Income Support benefits to those who qualify to assist with basic daily living expenses. The monthly basic Income Support rate for a single parent with dependent children is \$694, plus a monthly housing rate to a maximum of \$372 with a discretionary \$150 available to offset higher than average housing costs. Families with annual income less than \$25,028 and with children under age 18 also qualify for the Newfoundland and Labrador Child Benefit (NLCB). This amount is adjusted according to income. Families may also be eligible for the Canada Child Benefit (CCB) which varies and is based on family income. These are fully exempt as sources of income for AESL's calculations of Income Support. For families who do not receive the maximum child benefits because income in previous tax year was above income thresholds, additional Income Support can be provided through the Child Benefit Adjustment which is a temporary benefit. Eligibility may vary as well for other benefits depending on personal circumstances such as the Mother Baby Nutrition Supplement. This is \$60 per month during pregnancy and up to baby's first year. This is fully exempt income. (AESL, 2017).

While there are several measures of low income, this report will refer to the Newfoundland and Labrador Market Basket Measure (NLMBM), which defines low-income when family income falls below the estimated cost of purchasing goods and services in NL communities (Government of Newfoundland Poverty Reduction Division, 2017). The NLMBM for a family of four identifies the low income threshold between \$32,533 to \$46,053, depending on the region of the province (Government of Newfoundland Poverty Reduction Division, 2017).

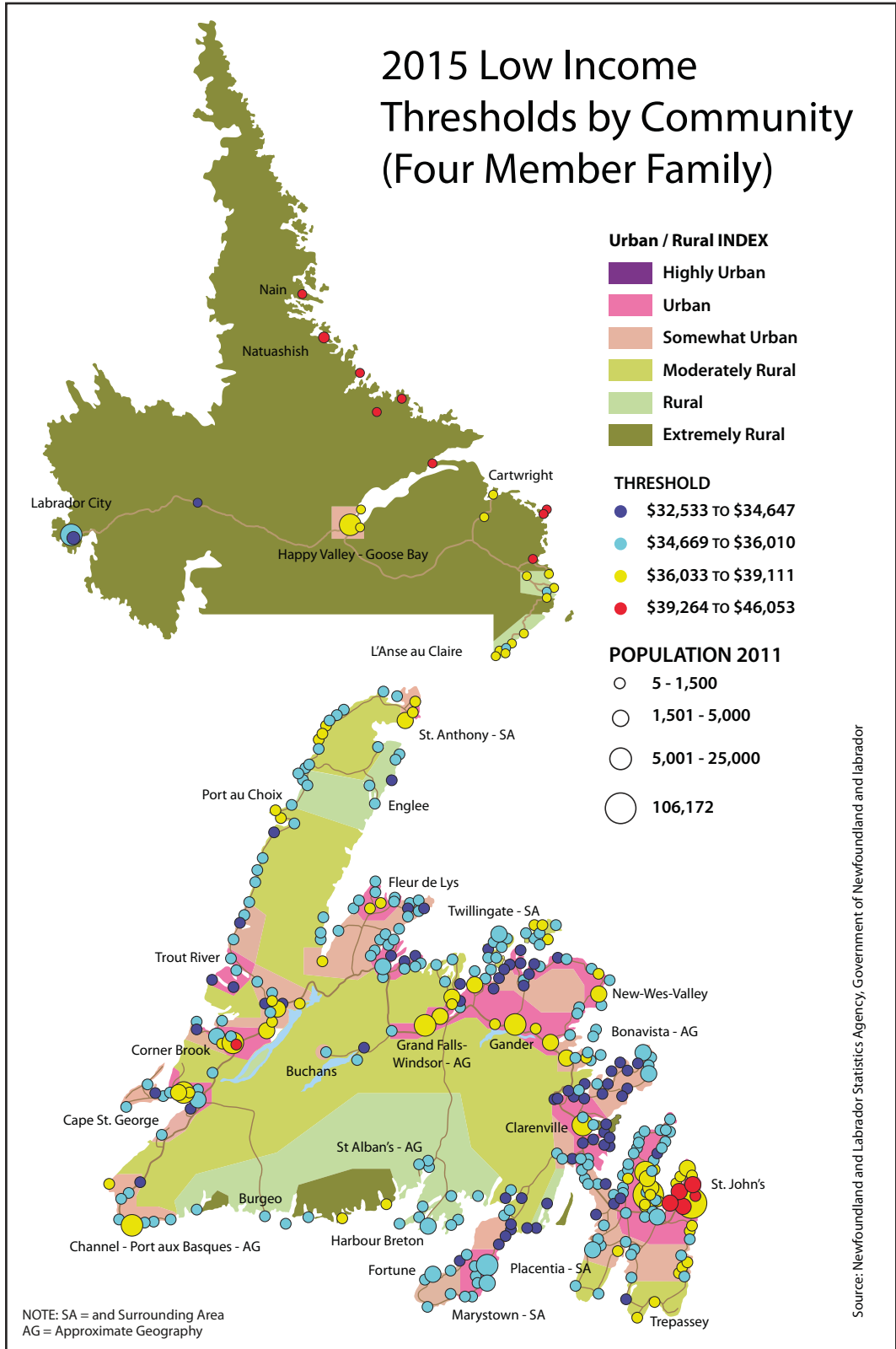
The NLMBM considers housing to be a big component in the calculation of low income thresholds. As an example, the average monthly rent for a two bedroom apartment in St. John's Newfoundland was \$958 in 2016 with a forecasted monthly rent of \$925 in 2017 (Canada Mortgage and Housing Corporation, 2017). This example of housing costs demonstrates that once housing costs are paid, there may be very little remaining money from existing Income Support benefits.

Of the 2588 families who had child support recovered, the head of household was female in 2,580 cases.



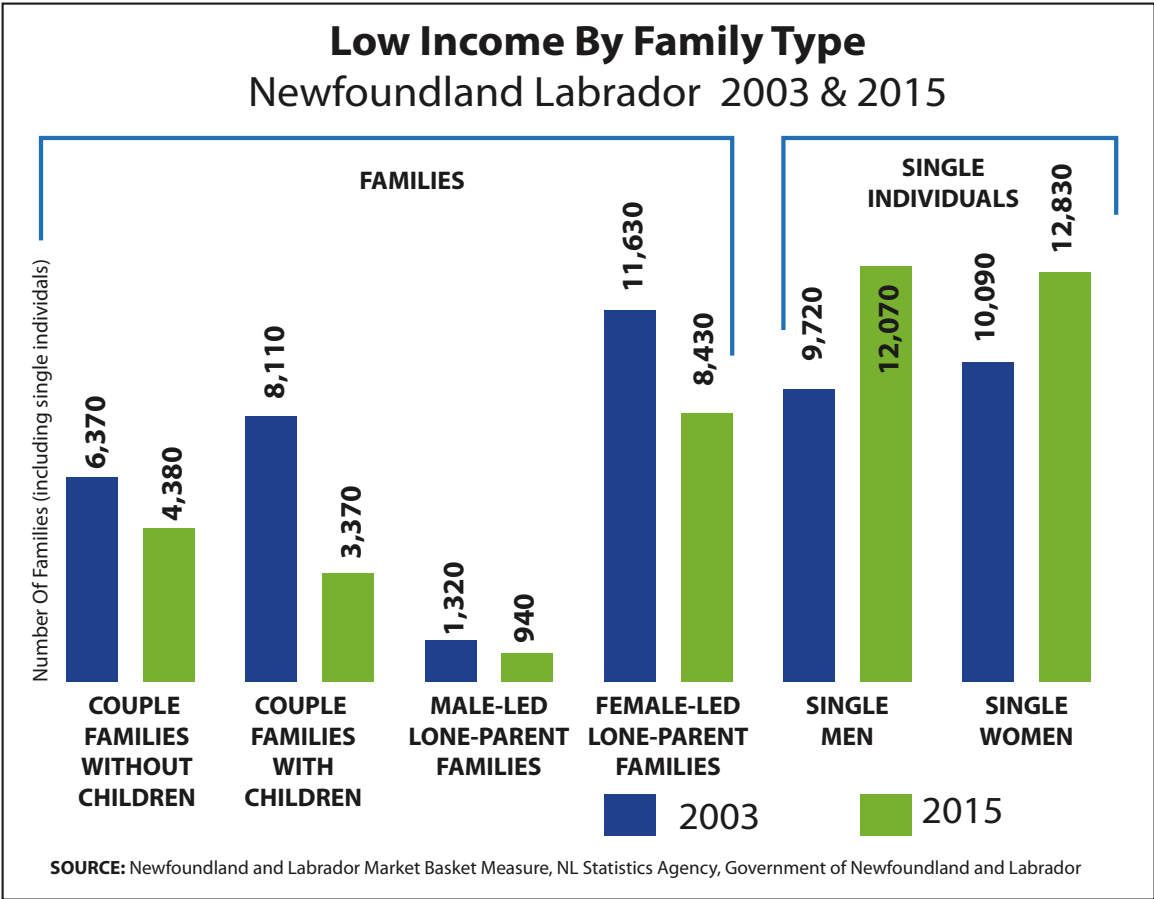
Once housing costs are paid, there may be very little remaining money from existing Income Support benefits.

2015 Low Income Thresholds by Community (Four Member Family)

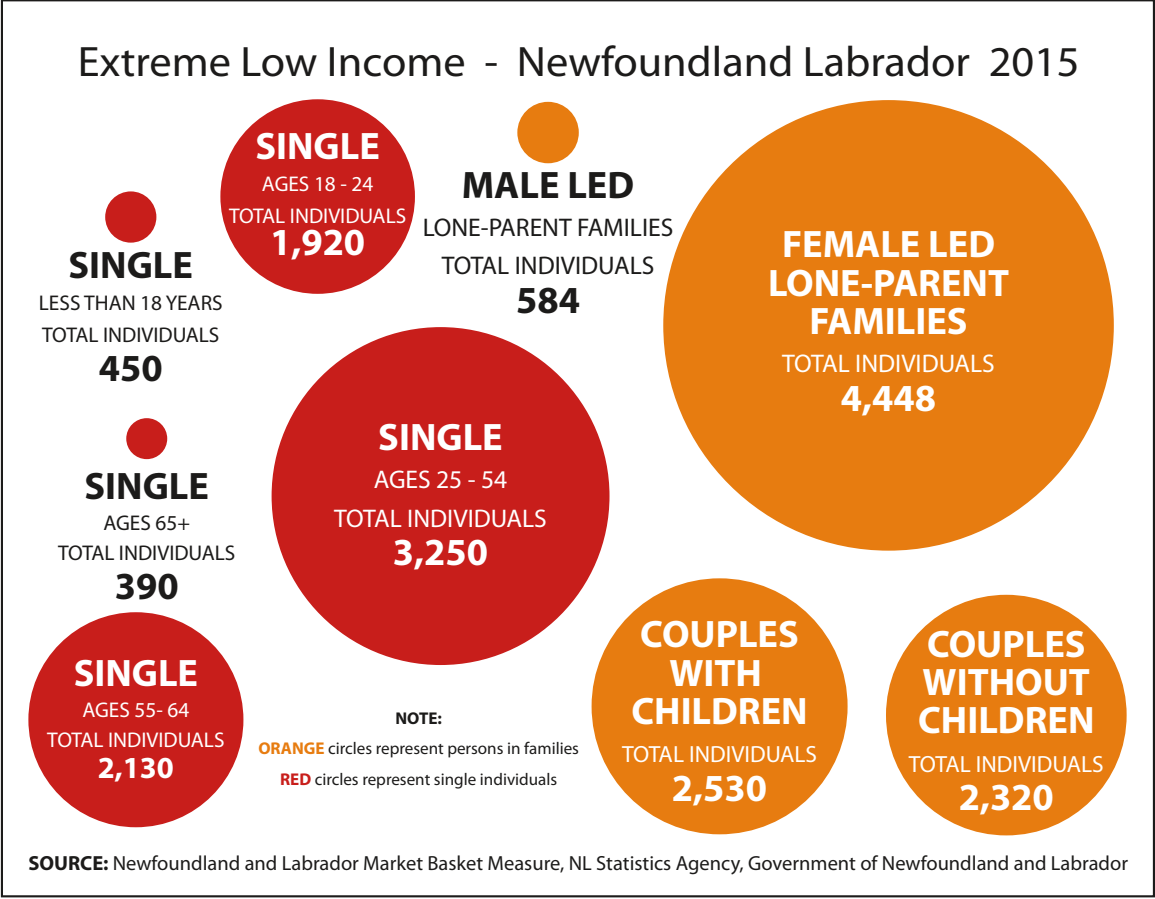


Child Poverty

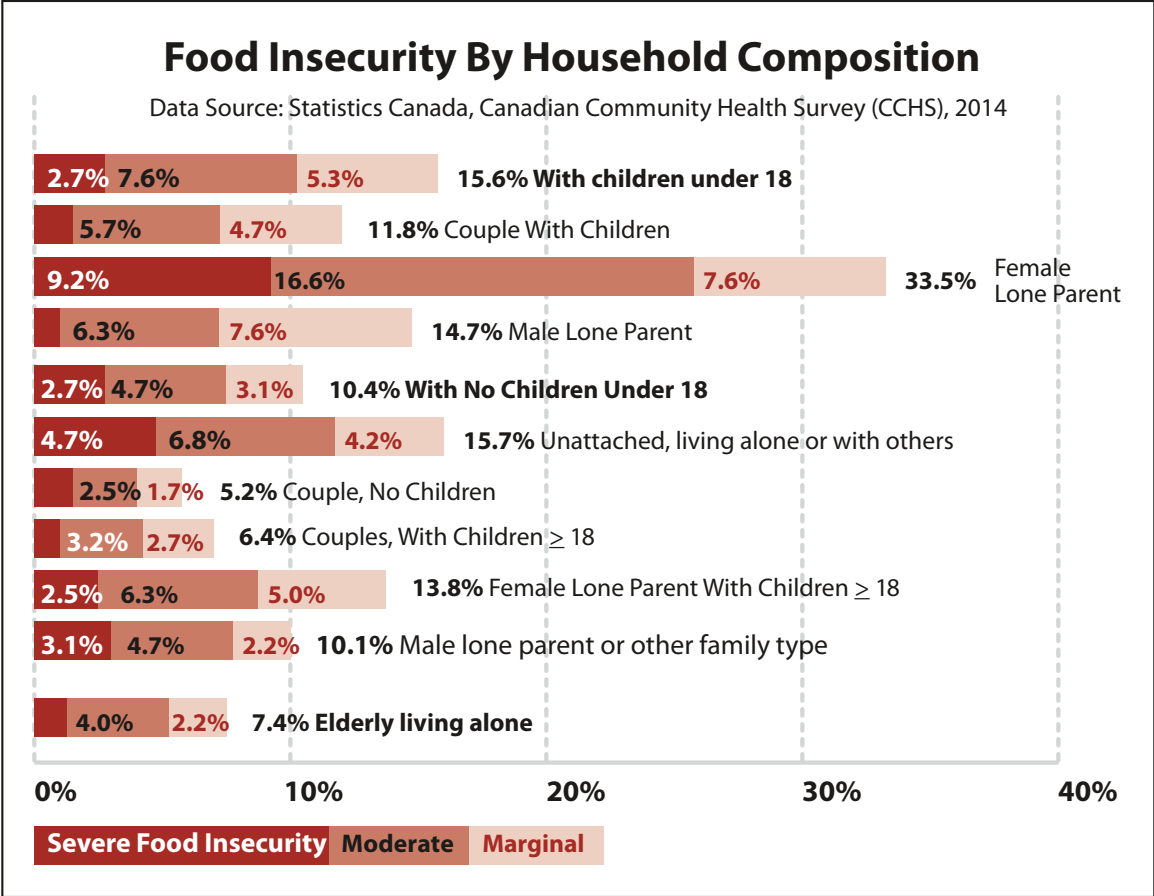
The recovery of child support payments from Income Support recipients compounds the experience of child poverty in Newfoundland and Labrador. The following table shows that there are significantly more female-led lone parent families than male-led in Newfoundland and Labrador. Statistics Canada (2016) Census Population data indicates that children who live in a lone-parent family are more than three times as likely to live in a low-income household than that of children in a two-parent family, and that the majority of children who live in lone-parent households live with their mother (Statistics Canada, 2017).



Data is also available on the number of individuals who experience extreme low income in this province. The table below indicates that female-led lone parent families are the largest group living in extreme low income.



Another measure that provides insight into the well-being of children is that of food security. Canada, and most jurisdictions, began to monitor food insecurity in 2005 through an optional module on the Canadian Community Health Survey (Tarasuk, Mitchell & Dachner, 2016). The most recent survey data (2013-2014) notes that food insecurity is most prevalent in households comprised of single parents that are female led, with children under the age of 18. Food bank usage is a reflection of food insecurity. According to the NL Community Food Sharing Association (2017), the experience of hunger is prevalent, with 40% of the people who depend on food banks for nutrition in this province under the age of 18.



Research has shown associations linking hunger in children with a greater likelihood of conditions such as depression, diabetes and heart disease in early adulthood (Tarasuk, Mitchell & Dachner, 2016). Individuals who rely on Income Support are particularly vulnerable to food insecurity. Food insecurity is relevant to this review as household income is directly related to the ability to purchase sufficient and nutritious food.

Analysis/Recommendations

It is fully acknowledged that the current practice in Newfoundland and Labrador is not unlike several other jurisdictions in Canada. However this province need not adopt a lowest common denominator approach in issues and public policy related to our children. This Review has shown that the recovery of child support payments from Income Support recipients does not align with current federal government tax policy, nor does it embrace the principle that child support is the right of the child as declared by the Newfoundland and Labrador Court of Appeal, and the Supreme Court of Canada.

Recommendation

The Department of Advanced Education, Skills and Labour eliminate the recovery of child support payments from Income Support Program calculations.

Conclusion

If the Government of Newfoundland and Labrador ceased its practice of recovering the value of child support payments from Income Support benefits, it would stand with other Canadian jurisdictions on the front lines of forward-thinking public policy for children. Children have a right to the support of both their parents to the best degree possible. And governments on all levels have a responsibility to uphold this right. This report demonstrates that those most vulnerable to poverty, i.e. children in female-led single parent households, are disproportionately disadvantaged by this policy. The current practice does not alleviate the experience of child poverty and serves to aggravate the economic vulnerability of children. This does little to advance the rights of these children. As the Government of Newfoundland and Labrador continues to move forward during challenging economic times, there is an even greater responsibility to care for those who are most vulnerable. We can and must do better.

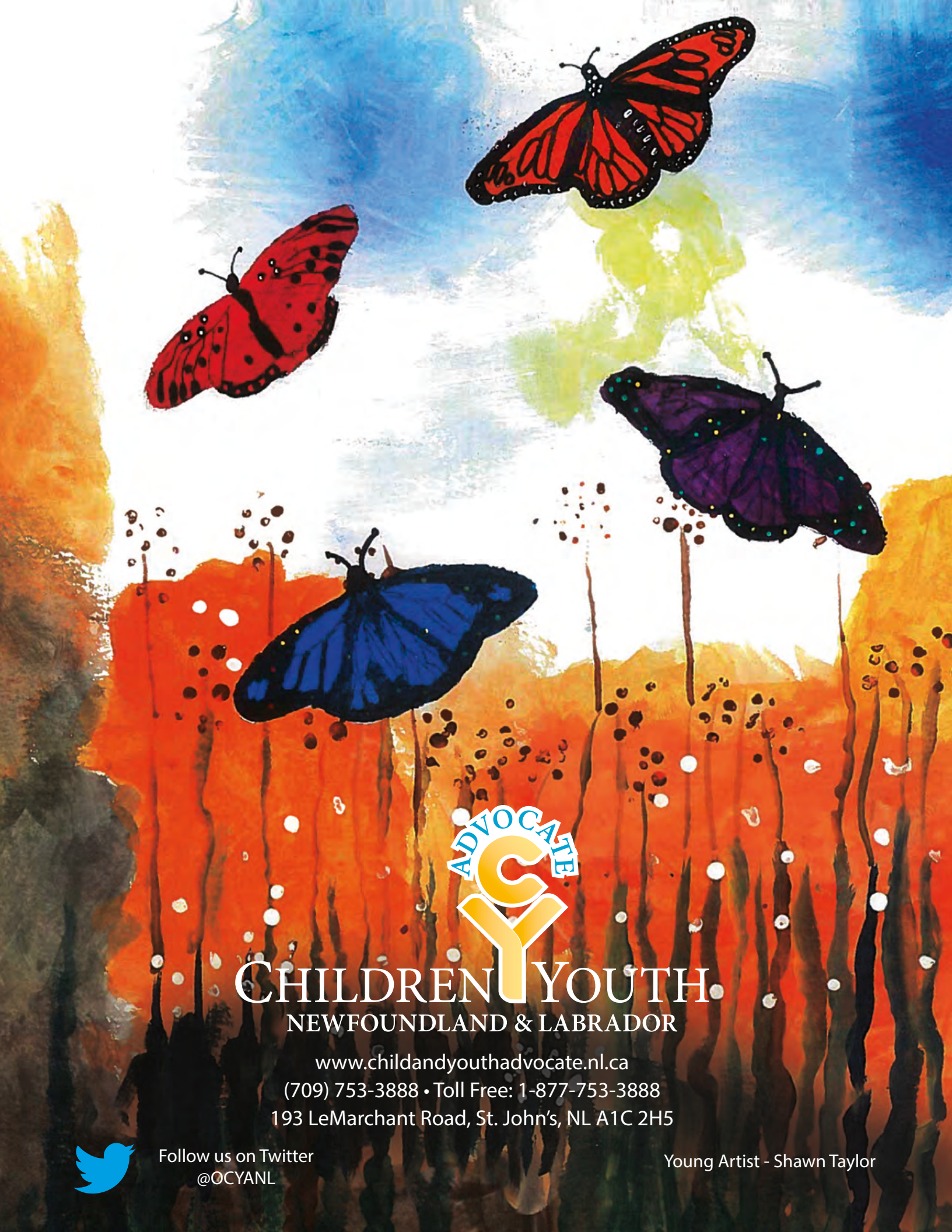
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Young Artist - Shawn Taylor