

The Mother-load of Blame: 'Failure to Protect' Policies in Canadian Child Welfare Law and Policy

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This paper uses a critical feminist analysis to examine 'failure to protect' policies in the context of child welfare regimes. The term 'failure to protect' refers to specific statutory language and policies that hold a child's guardian responsible for not preventing a child from being harmed or from witnessing violence within the home.

'Failure to protect' provisions can be found in both provincial and territorial child welfare Statutes and are inferred in other statutes and policies through directions to workers to assess whether a guardian is "willing and able to protect" a child. Whether "failure to protect" provisions are written directly into child welfare legislation, the practice of holding a child's guardian responsible for violence experienced or witnessed by a child, broadly informs child protection practice, including in situations of intimate partner violence and child sexual abuse.

"Failure to protect" provisions have a disproportionate affect on women. For example, mothers are regularly held responsible for "failing to protect" in situations where they are assaulted within the proximity or knowledge of their children. Mothers are similarly held responsible when a father or other intimate male partner sexually abuses a child. These consequences occur equally in jurisdictions with gender-neutral and gender-specific child welfare law and policy.

This paper demonstrates that 'failure to protect' law and policy forms a doctrine that serves to punish mothers rather than to protect children with adverse and dangerous consequences for women and children, the implications of which are multiplied at every intersection of oppression. The paper concludes with recommendations to reform 'failure to protect' Statutes and policies to better realize child welfare's mandate to support families and protect children.

The writers adopt the position that child welfare agencies, criminal justice and other authorities must engage with men who are responsible for intimate partner violence and child sexual abuse. The paper advocates for legislative changes that would require child protection services to intervene directly with domestically violent men rather than place expectations solely upon mothers to control men's violence towards women and children.