



Know Your Rights

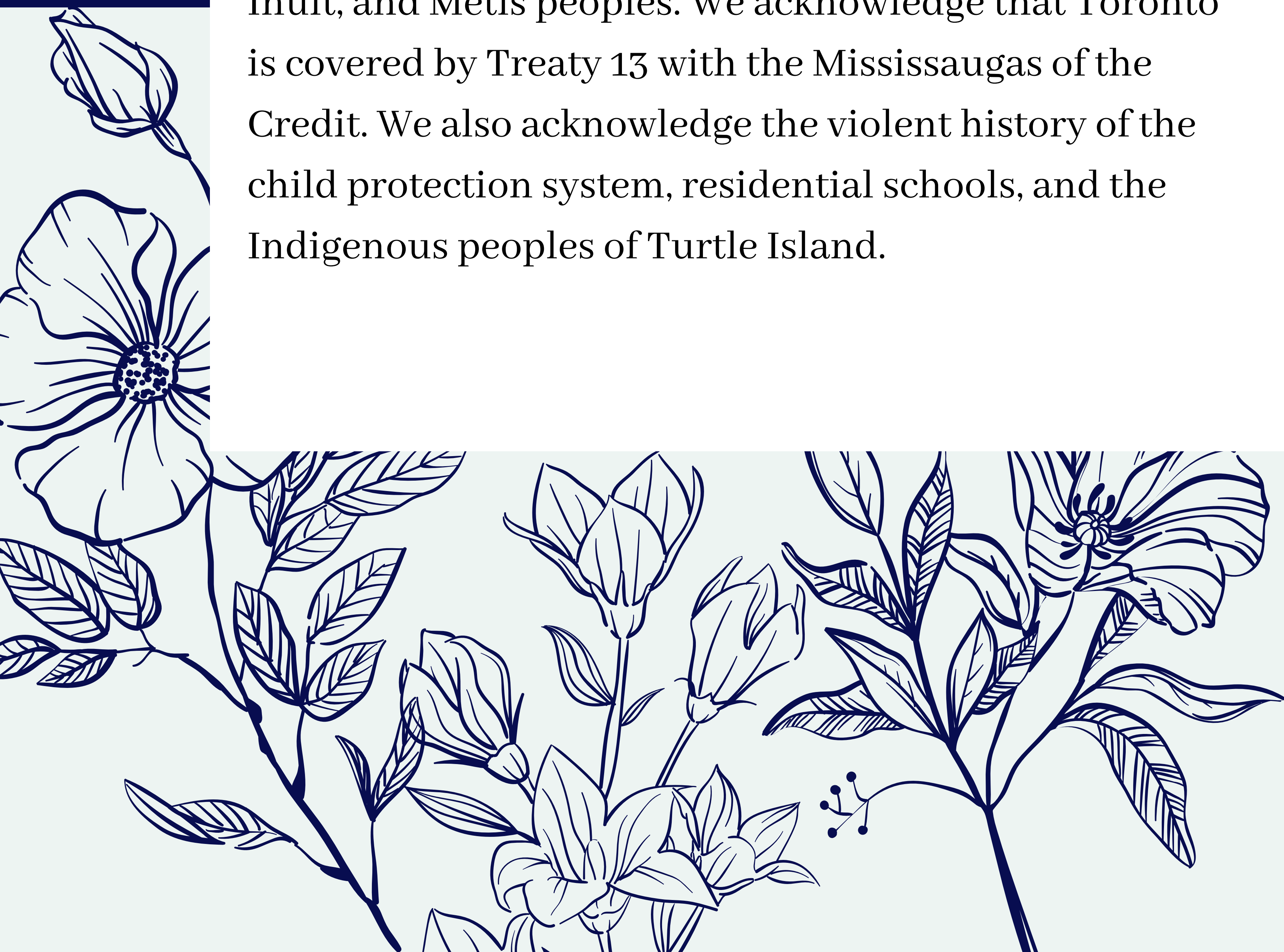
Drug Use and the Child
Protection System in Toronto

June, 2021

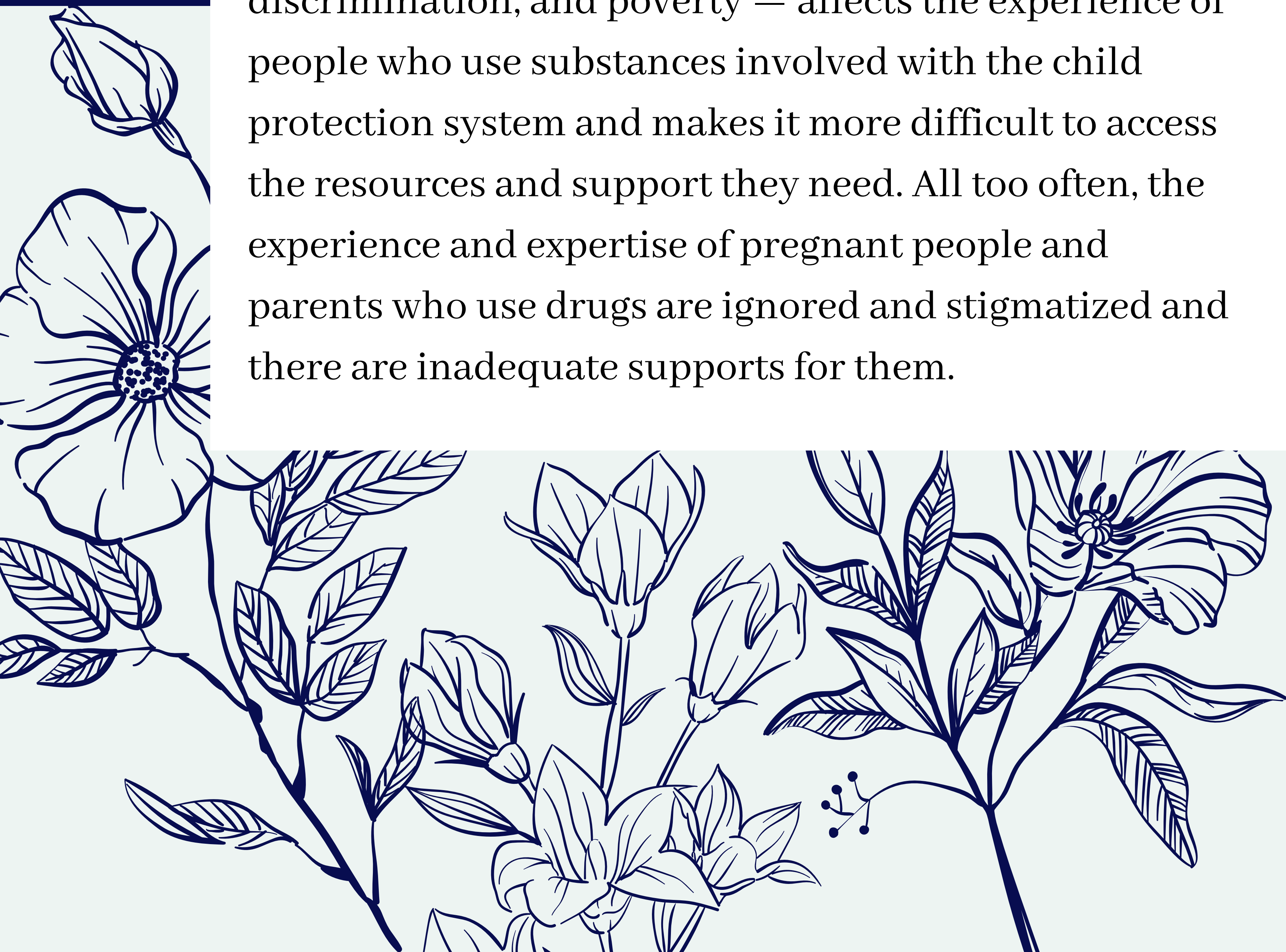
About This Resource



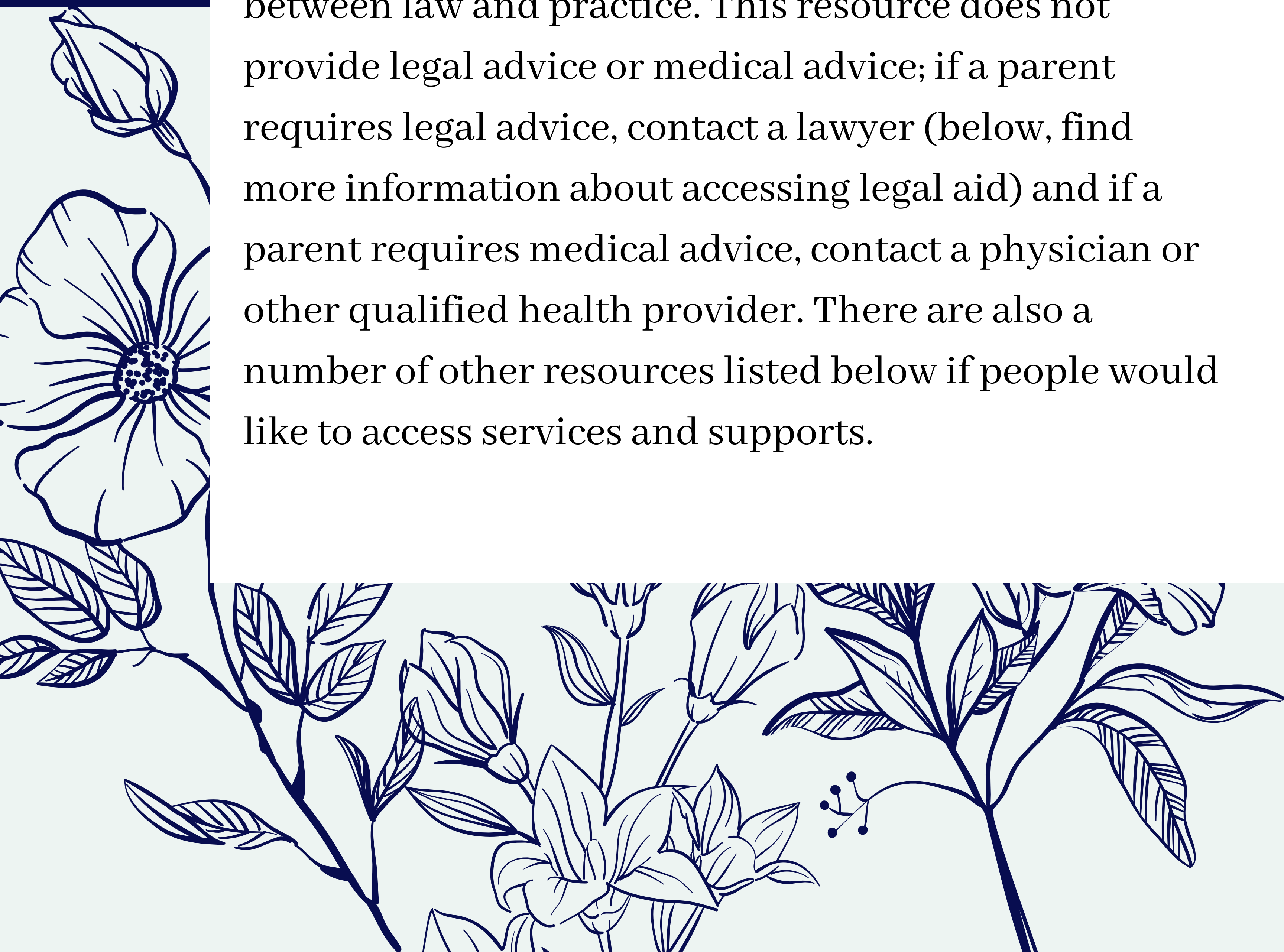
This resource provides information about the child protection system in Toronto. We acknowledge Toronto is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples and is now home to many diverse First Nations, Inuit, and Métis peoples. We acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit. We also acknowledge the violent history of the child protection system, residential schools, and the Indigenous peoples of Turtle Island.



Many parents and pregnant people are worried about how their substance use may affect their rights as a parent or as a pregnant person. Stigma and discrimination against parents who use substances — which is made worse by colonialism, racism, sexism, classism, homophobia, transphobia, other forms of discrimination, and poverty — affects the experience of people who use substances involved with the child protection system and makes it more difficult to access the resources and support they need. All too often, the experience and expertise of pregnant people and parents who use drugs are ignored and stigmatized and there are inadequate supports for them.



This resource provides legal information for parents who use substances that are involved with the child protection system in Toronto, their loved ones, and their service providers. It is important to know that the legal information provided here does not always reflect what happens in reality, because of the discrepancy between law and practice. This resource does not provide legal advice or medical advice; if a parent requires legal advice, contact a lawyer (below, find more information about accessing legal aid) and if a parent requires medical advice, contact a physician or other qualified health provider. There are also a number of other resources listed below if people would like to access services and supports.



A Guide To Common Terms

These terms, many of which are legal terms with specific definitions, are commonly used by lawyers, judges, the children's aid society, and other professions that are regularly involved in the child protection system. A parent may find some of these terms harmful and offensive.

Access – The time a person is given to be with their child and the right to access information on decisions made about the care of the child (even if this right is not always respected). Note: access is different from custody, which is the right to make decisions about the care of the child.

Apprehension – The taking of a child from a parent's care and placing them under the care and control of a kinship relationship (e.g. friends or family of the parent) or the children's aid society (e.g. foster care provider)



Child in Extended Society Care – When a child has been ordered to be under the care, custody, and control of children's aid society until the child is 18 years old. Sometimes also referred to as being a "Crown ward."

Child Protection System – Sometimes also referred to as the "child welfare system," the set of laws, services, and programs that is meant to protect children.



Children's Aid Society – An agency given the responsibility from the government to protect a child from what they believe to be neglect, abuse, and violence. In Toronto, there are four children's aid society agencies: Children's Aid Society of Toronto (CAST), Catholic Children's Aid Society of Toronto (CCAST), Jewish Family and Child Service (JF&CS), and Youth Native Child and Family Services of Toronto (NCFST).

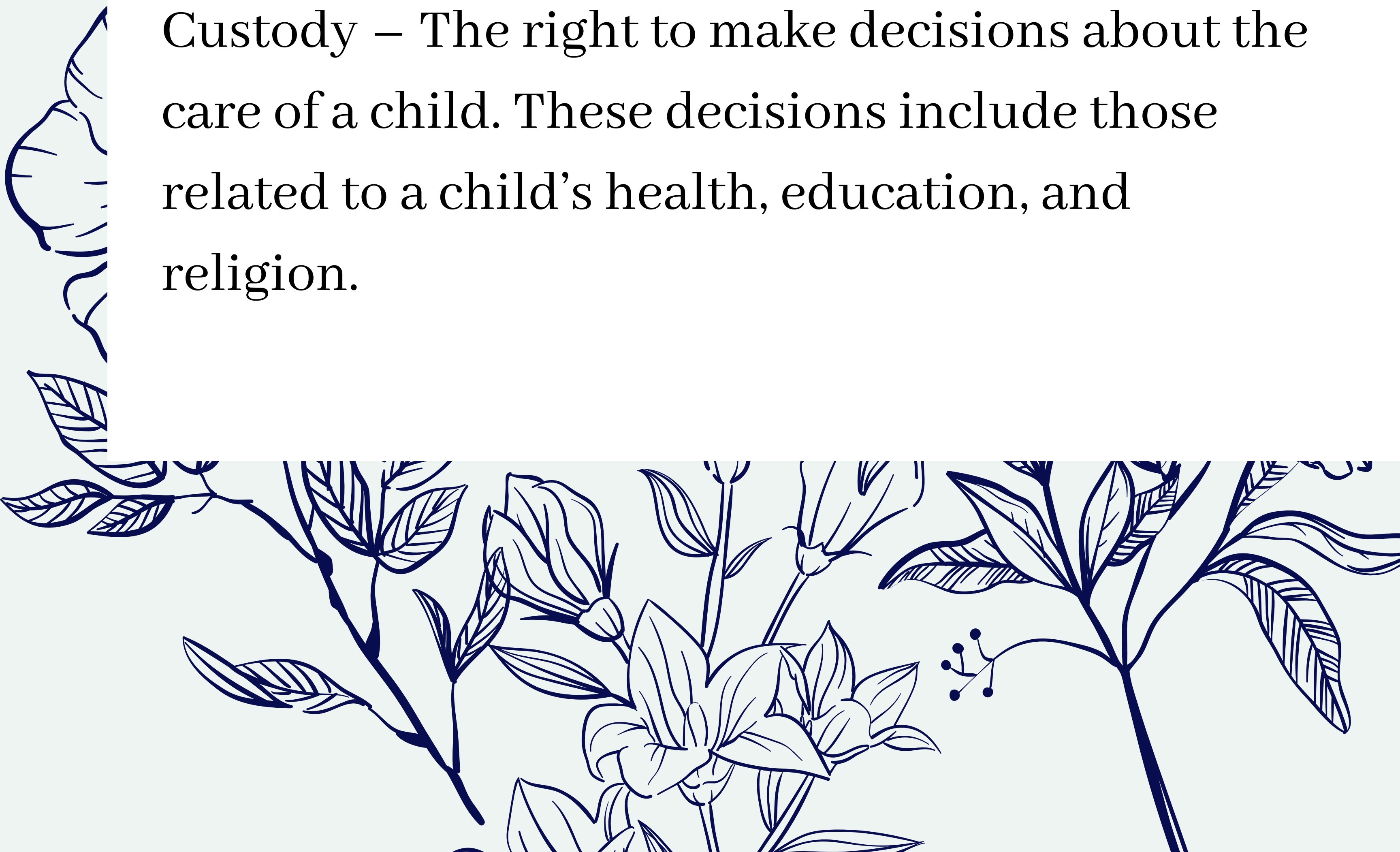
Child Support – The amount of money paid to support the child by one parent to the other parent who is caring for the child.

Child, Youth and Family Services Act – Law in Ontario that governs services and programs involving children, youth, and families.

Court Order – A decision made by a judge that parties (e.g. a parent, children's aid society) are required to follow. They may require a parent to be tested for drugs regularly, go to counselling, and/or go to parenting classes.

Cultural Safety – The right to be provided service and support that respects a person's culture and allows the person to safely practice their culture.

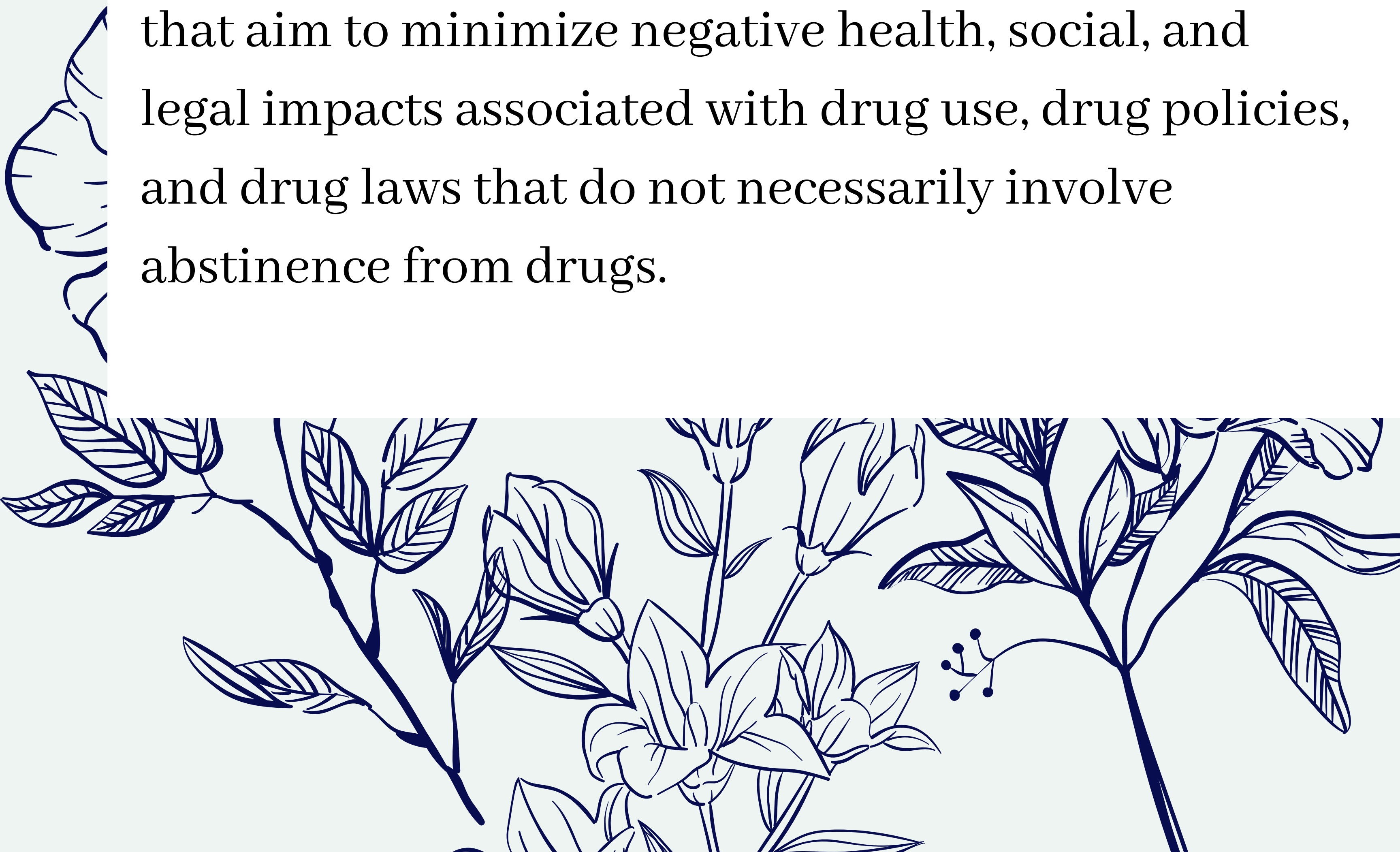
Custody – The right to make decisions about the care of a child. These decisions include those related to a child's health, education, and religion.



Family Court – The division of court where issues such as custody, access, child support, and child protection are dealt with. In Toronto, Family Court offices are located at:

- 311 Jarvis Street
- 361 University Avenue (does not deal with child protection)
- 47 Sheppard Avenue East

Harm reduction – Policies, programs, and practices that aim to minimize negative health, social, and legal impacts associated with drug use, drug policies, and drug laws that do not necessarily involve abstinence from drugs.



Interim Society Care – A type of court order where a child is placed in the care of the children aid society for no longer than 12 months.

Legal Aid – Legal services for low-income individuals. Each province and territory has legal aid service providers. In Ontario, Legal Aid Ontario provides various legal aid services, including services related to family law and child protection. Generally, Legal Aid eligibility is based on income and number of family members. Legal aid eligibility requirements may change over time. To find out if a parent qualifies to receive free legal aid, contact Legal Aid Ontario toll-free at 1-800-668-8258. Family court offices are also able to provide general information about legal aid services. A parent can ask their social worker for assistance with getting support from Legal Aid.

Office of the Children's Lawyer – Commonly called “OCL,” an office that provides representation for children in court cases in Ontario, including disputes related to parenting time and decision-making responsibility, or when a children's aid society believes a child needs protection because of abuse or neglect.

Substance Use – The use of drugs including alcohol. The drugs may be legal, illegal, or prescribed by a licensed health practitioner.

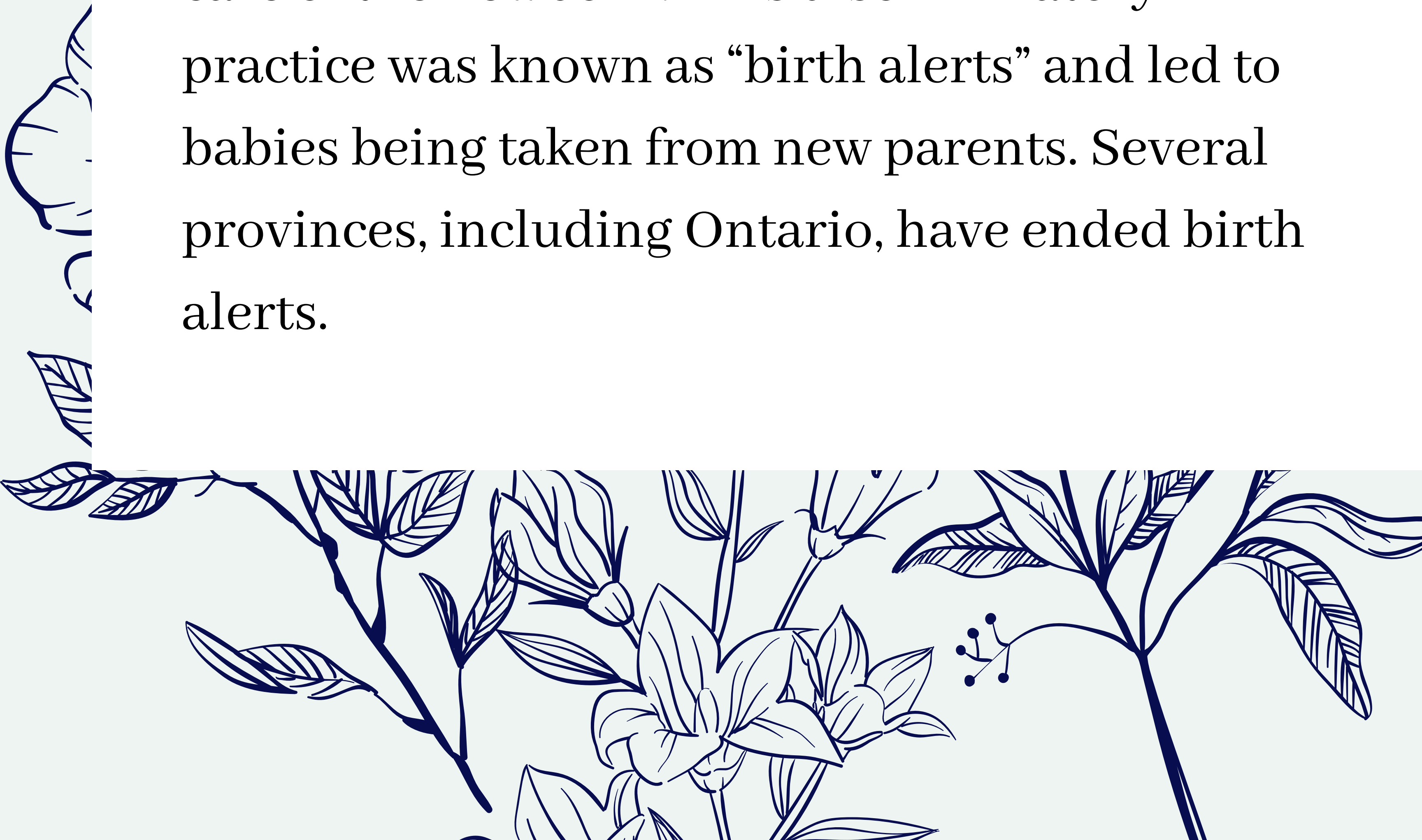
Supervision Order – A type of court order that places the child in the care and custody of a parent or another person, while under supervision of the children's aid society, for a specified period of at least 3 months and not more than 12 months. The children's aid society can apply for a status review after the expiry of the supervision order.

Frequently Asked Questions



I am about to give birth. Can children's aid society alert the hospitals if they know I used or use drugs?

No. In Ontario, children's aid societies are no longer allowed to contact hospitals and birth centres regarding any concerns related to the care of the newborn. This discriminatory practice was known as "birth alerts" and led to babies being taken from new parents. Several provinces, including Ontario, have ended birth alerts.



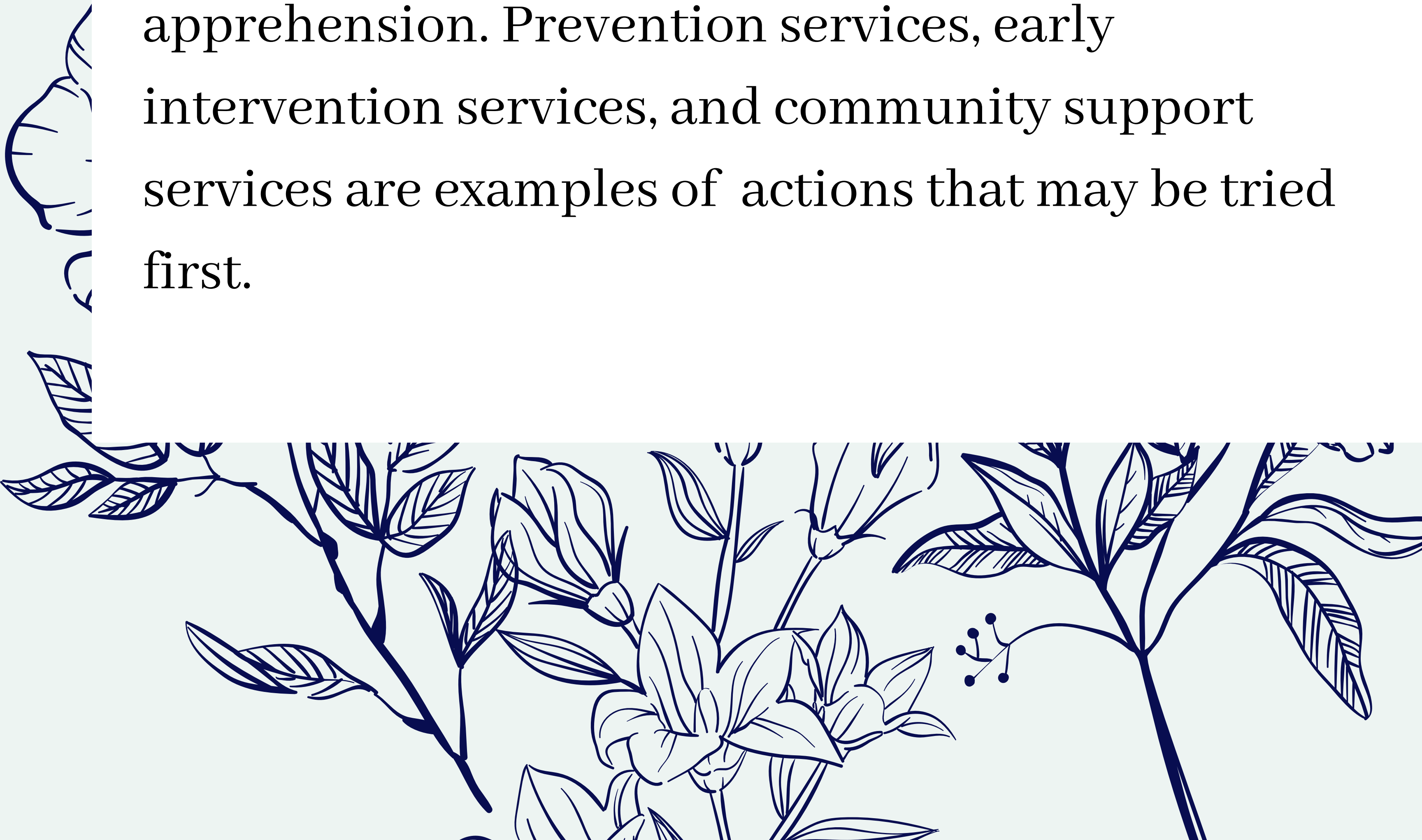
While healthcare providers and hospital staff have a legal duty to report concerns of perceived neglect and abuse of a newborn to the children's aid society, a doctor does not have a legal obligation to report substance use during pregnancy, and is not required to provide this information to the children's aid society during a patient's pregnancy. Although doctors are not required to report substance use during pregnancy, they may still do it. If you think a doctor has unfairly reported your substance use, you may wish to consult with a lawyer about your options.

Therefore, be careful about what you share with your doctor and be aware of the risks of disclosing your substance use. You may also wish to seek out health care providers who are supportive of patients who use substances.

Children's aid society has told me they will take my child at birth. What can I do next?

If the children's aid society determines that they have serious concerns of neglect and abuse, they may apprehend a child at birth.

Actions that protect the child and are less harmful to the child should be considered before apprehension. Prevention services, early intervention services, and community support services are examples of actions that may be tried first.



When children's aid society applies to apprehend the child, the parent will be given the opportunity to respond to the allegations made against them. Legal documents will need to be filled out by the parent. It is important that the parent gets legal advice and community support when the children's aid society provides you with court documents.

While pregnant, a parent may already know that the children's aid society is planning to apprehend their child. It is recommended that the parent seek legal advice prior to delivery. A parent can contact Legal Aid and ask for a "10-hour pre-litigation certificate". If granted, this certificate will allow a parent to use up to 10 hours of a lawyer's legal services prior to appearing in court.

If you identify as Indigenous, sharing your identity with your lawyer can ensure that both your lawyer and the court take into consideration the child's Indigenous identity, community, and history. An Indigenous parent can also ask their lawyer about options available to them to participate in culturally safe alternatives to appearing in court.



I've been contacted by children's aid society. What should I do?

The children's aid society has a legal duty to investigate all allegations of child neglect and abuse. After an investigation, the children's aid society will decide whether the allegations are false or decide what the next steps will be. This means that all reports will be investigated. Legally, the children's aid society does not have to to inform parents of their rights. This can be a terrifying process, and it demonstrates the importance of parents knowing their rights and having support people present.



The children's aid society does not make random checks. If the children's aid society has contacted a parent, then someone has reported the parent to them. The public and professionals, including those who work with children, have a duty to report concerns of child abuse and neglect.

The children's aid society may contact the parent to discuss their concerns and schedule an appointment to visit the parent and child, and ask questions related to these concerns. While a parent has no obligation to let a children's aid society representative into their home (unless they are there to apprehend a child), all interactions a parent has with the children's aid society may be documented in a parent's file and used in court.



If through the investigation process, an intake worker believes there is concern enough to open a file, a child protection worker will then be assigned to the family and they work on behalf of the children's aid society. The child protection worker will know the details of the family and will often be the person who assesses and documents the safety and wellbeing of the child and the parent's ability to care for the child. It is important the worker be able to get a hold of the parent, and that the parent is aware that they will record everything you say and do and can refer to them in court.

It is important that your first contact with the children's aid society is in the presence of somebody who can support you (e.g. a trusted social worker or counsellor, family, or friend) because they can provide insights about the process and what information to share and not, so take the time to schedule an appointment that includes your support person. You need to be careful about what you share with children's aid society because all of this information will be documented and may be used against you in court. Your support person can also serve as a witness in the event that there are disagreements about what happened during these meetings.

Who can I turn to for support during this difficult process of engaging with the child protection system?

There may be many different problems that you encounter with child welfare. A support person with specific knowledge and expertise may help you find a solution to a particular problem.

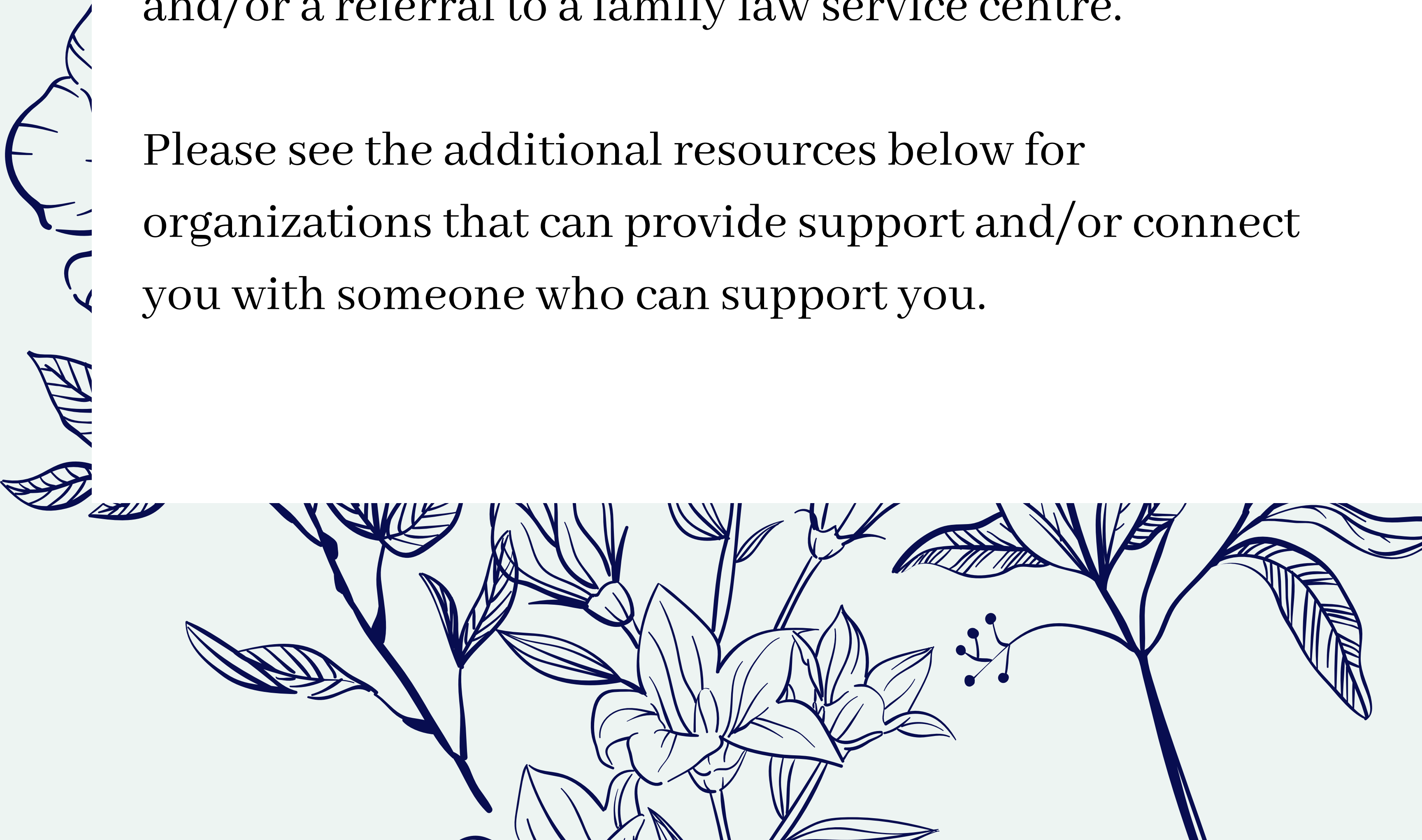
Lawyers, healthcare providers, social workers, counsellors, outreach workers, and networks of people who have been through the child welfare system may all be of help to you. You do not have to be stuck alone with child welfare workers if you do not trust them and if they make you feel unsafe.



Seeking support from community, elders, knowledge keepers, trusted family members, and friends are recommended.

If you need legal help, you can see if you qualify for legal aid services by contacting Legal Aid Ontario toll-free at 1-800-668-8258. If you do not qualify for a legal aid lawyer, you could get help from the Family Law Information Centre at your courthouse, where an “Advice Lawyer” could give you up to 20 minutes of free general advice and/or a referral to a family law service centre.

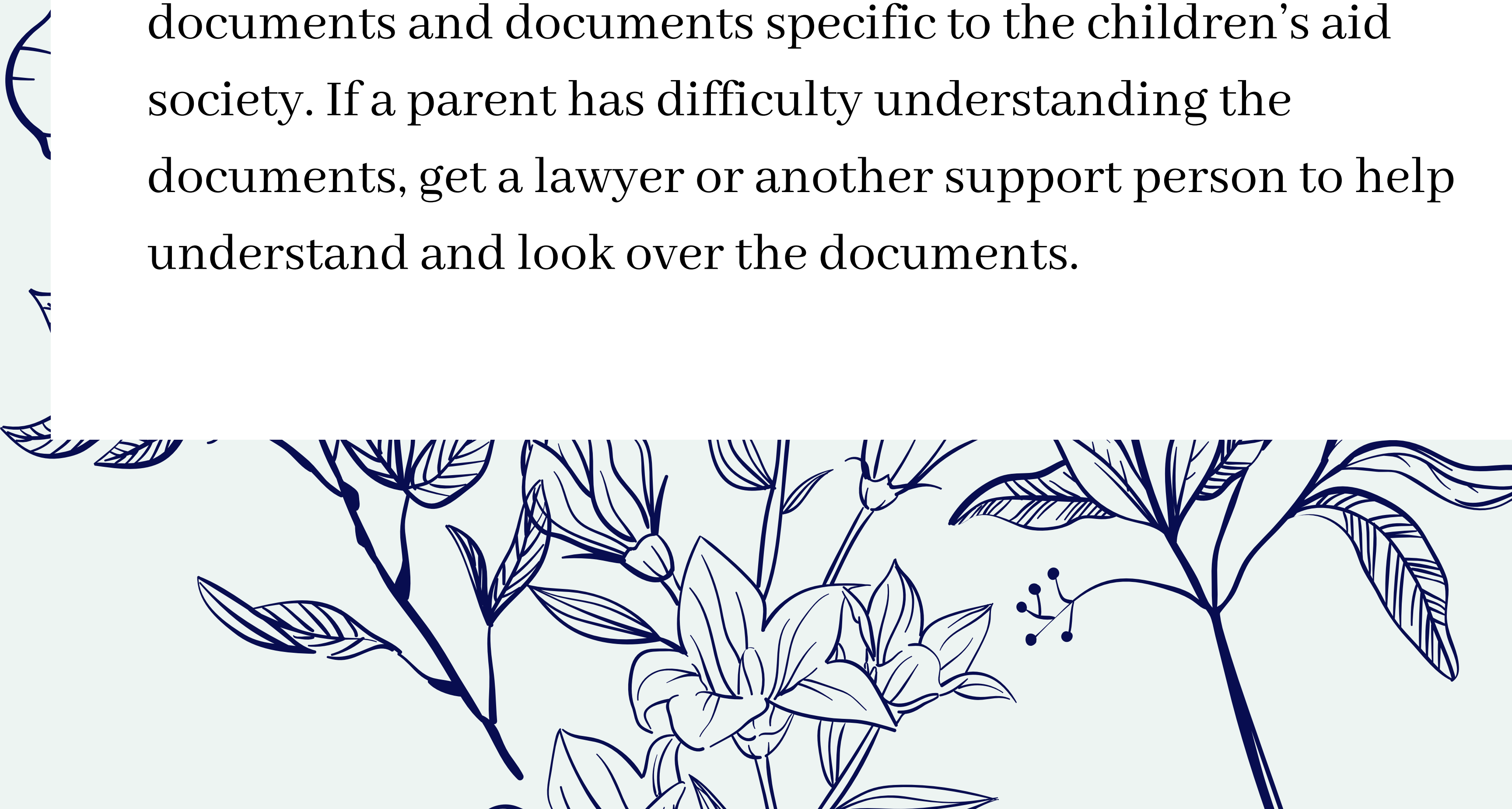
Please see the additional resources below for organizations that can provide support and/or connect you with someone who can support you.



Can I request a copy of my file with the children's aid society?

You can request to see your children's aid society file. Information in the file may be helpful in determining what the children's aid society intends to do, what they have already done, and the reasons they are involved. Requesting a file in writing may be helpful to understand their intervening in your life.

Keep all the documents that are provided by the children's aid society. The documents may be a mix of legal documents and documents specific to the children's aid society. If a parent has difficulty understanding the documents, get a lawyer or another support person to help understand and look over the documents.



What can I generally expect when I go to court?

Before going into the courthouse there will be a security check by police. They will go through your bags and put your things through a metal detector. Most appearances will be in front of a judge. There are courtroom rules, which include being on time, standing while speaking to the judge, and addressing the judge as either “Your Honour” or “Justice [last name]”. A lawyer or any other trusted person who knows courtroom etiquette can help you prepare.

Many parents find this process very difficult. The grief, sadness, anger, and other feelings that may arise during the process can affect your ability to focus and overall wellbeing. Preparing for a long day, eating before and bringing food, drinking water, and finding a good listener and support person may be helpful for you, as well as having plans after court in case you feel like supportive company.

Will I see my child and their other parent/care provider at court?

Yes. You may have to see the child's other parent and/or caregiver. When a child protection case has started, you, the child's other parent/caregiver, and the children's aid society will all be there. If appointed by a judge, a children's lawyer will also be in court.

If you are concerned about possibly having to see and communicate with your child's other parent, a lawyer may be helpful. If you have a lawyer, the other parent can contact them to talk about court matters. If any communication is required between you and your child's other parent, but you feel unsafe with them, there are options that limit communication and are safer. You can ask the judge about these options, but not every form of communication may be approved by the court.

In some circumstances, the child may be present at court.

Can the children's aid society ask about a parent's alcohol and drug use, or can they ask me to take a drug and alcohol hair strand test?

No. The children's aid society cannot require a parent to take a drug and alcohol hair strand test. However, the court can make an order requiring a parent to take a drug or alcohol test. The court may make this order when the children's aid society expresses concerns to the court about whether a child is being cared for when a parent is using substances. It is therefore important for you to seek legal advice when you are requested to take an alcohol or drug test.



Although the children's aid society cannot require you to take a drug test without a court order, they can ask you any questions about the safety and wellbeing of the child, including questions about alcohol and drug use.

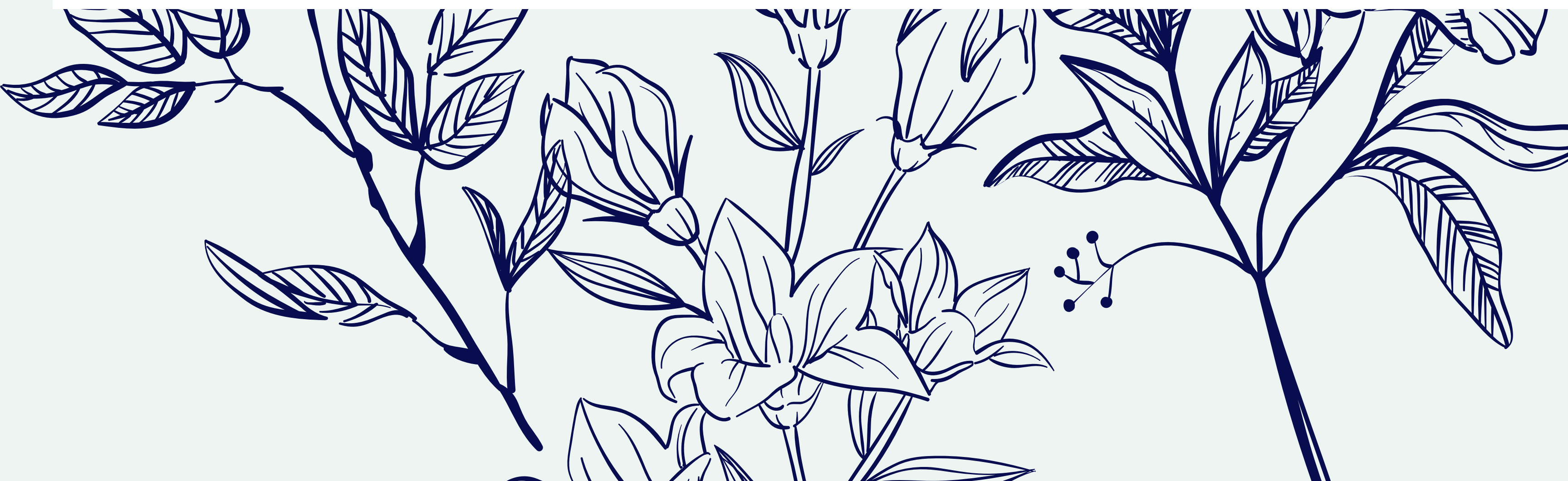
You are not legally required to answer the children's aid society's questions, unless ordered by the court. The children's aid society can let the court know of all questions a parent refuses to answer and any answers you have provided that are conflicting.

Answering questions from the children's aid society can be difficult. You may feel pushed into answering questions and signing consent forms. It is highly recommended that a parent get support from a lawyer, social worker, and/or trusted advocate when asked to answer questions from the children's aid society. Only a lawyer can advise you on the legal consequences of answering (and not answering) questions.



A court order has been made and my child is currently under my care, so why is children's aid society still involved?

Discuss the court order with your lawyer to understand why the children's aid society is still involved and for what amount of time. This is called a "supervision order." The supervision order can be renegotiated and adjusted; you may wish to limit children's aid society surveillance as much as possible. Discuss this with your lawyer and a support person.



I haven't attended any court appearances or submitted any documents. What might happen?

You may be “noted in default,” meaning that a court may decide that the parent has waived their rights to be notified of any information about their court case. A parent who missed court can still go to the court offices to get court orders they are missing. Getting a court file that has been closed will be harder, asking for a lawyer/advocate/support person for help can make things move along faster.

When a parent has been noted in default, asking to change a court order can be difficult. Seeking legal advice is recommended. When trying to change a court order where a parent has been noted in default, the parent should be prepared for the judge to ask them to explain why they did not respond before.

All court orders, including those made with a parent noted in default, are still enforceable. This means the order must be followed, whether or not you or any other party are planning to challenge it. Not following court orders may result in negative consequences such as fines and other legal penalties.



I have pending criminal charges against me, and now children's aid society has started a case against me. How do I deal with both?

Criminal cases and child protection cases are dealt with by separate courts. However, a criminal charge or conviction could affect a parent's access to and custody of their child. If a parent is seeking legal advice and representation, separate lawyers may handle the criminal case and the child protection case. It is important that you tell your lawyers that you are dealing with both issues.

If a child is in the care of children's aid society and you would like to have an order that will give you access, you may be asked to share any current charges or convictions for a crime involving an act of violence against the child or the parent of the child.

While a child is in the custody of the children's aid society, they may ask the person who spends time with both you and your child during your access to do a criminal record check.

I have attended treatment or I got the help I needed, so will the involvement of children's aid society in my case now end?

Getting help such as counselling may not result in the end of a court case or involvement of children's aid society, but it is a factor a judge will consider when making an order about access to your child. If there are no concerns of abuse, neglect or harm, a parent can both receive help and support services while caring for their child



I've lost contact with my child for years. Will I be able to see them?

You should seek legal advice.

There is always a possibility to reconnect with your child, but the process varies based on each family. Each family will have a different experience. It is important that you find the right support (for example, a supportive agency) that can help you in this process. See the Additional Resources section below for a list of supportive organizations.



In my tradition and culture, substance use issues are addressed differently than the Western approach. Will the court accept my traditional/cultural approach?

Support comes in many forms, and you can tell the court about these supports to inform their decisions.



The child protection system continues to cause violence and harm to Indigenous and Black people. Indigenous and Black children are overrepresented in the Ontario child protection system. The 2018 report by the Ontario Human Rights Commission, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* describes how Black children are overrepresented in being taken into care by children's aid society agencies, with Black children being admitted into care 2.2 times higher than their proportion of the child population in Ontario. Indigenous children are also overrepresented in being taken into care, with Indigenous children being admitted into care 2.6 times higher than their proportion of the child population in Ontario. The overrepresentation of Black children in the child protection system has been linked to a history of racism against African Canadians, starting with slavery in Canada. For Indigenous families, the impacts of colonialism, residential schools, the Sixties Scoop, and the effects of intergenerational trauma have informed their relationship with child protection systems. The courts and the child protection system continue this cycle of harm and violence.

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Additional Resources



Aboriginal Legal Services' Giiwedin Anang Council

416-408-3967, extension 222

giiwedinassistant@aboriginallegal.ca

The Council is run by a group of volunteers from the Indigenous community in the Greater Toronto Area and provides support for families involved with child protection system and family court.

Anishnawbe 24/7 Mental Health Crisis Management
Service for Aboriginal Clients

416-891-8606

Emergency mental health support and resource for Indigenous people.

Breakaway Community Services: Supports for People Who Use Drugs. Harm Reduction Outreach, Housing, Family and Youth Programming. breakawaycs.ca.

Contact: Lindsay Williams 416-910-7882

Call Aunties

437-703-8703

A phone-line created to support Indigenous people living in the GTA with questions about sexual health, reproductive health, health access and resources. Call aunties is also providing urgent and immediate support related to the COVID-19 pandemic and questions about immunization.

CAF Community Action for Families

<http://www.communityactionforfamilies.com/about-us/>

Support groups for parents, court support, advocacy
communityactionforfamilies@gmail.com

Canadian HIV/AIDS Legal Network. Harm Reduction
Services For Indigenous People Who Use Drugs:
Questions and Answers, March 2017.

Diversity Midwives

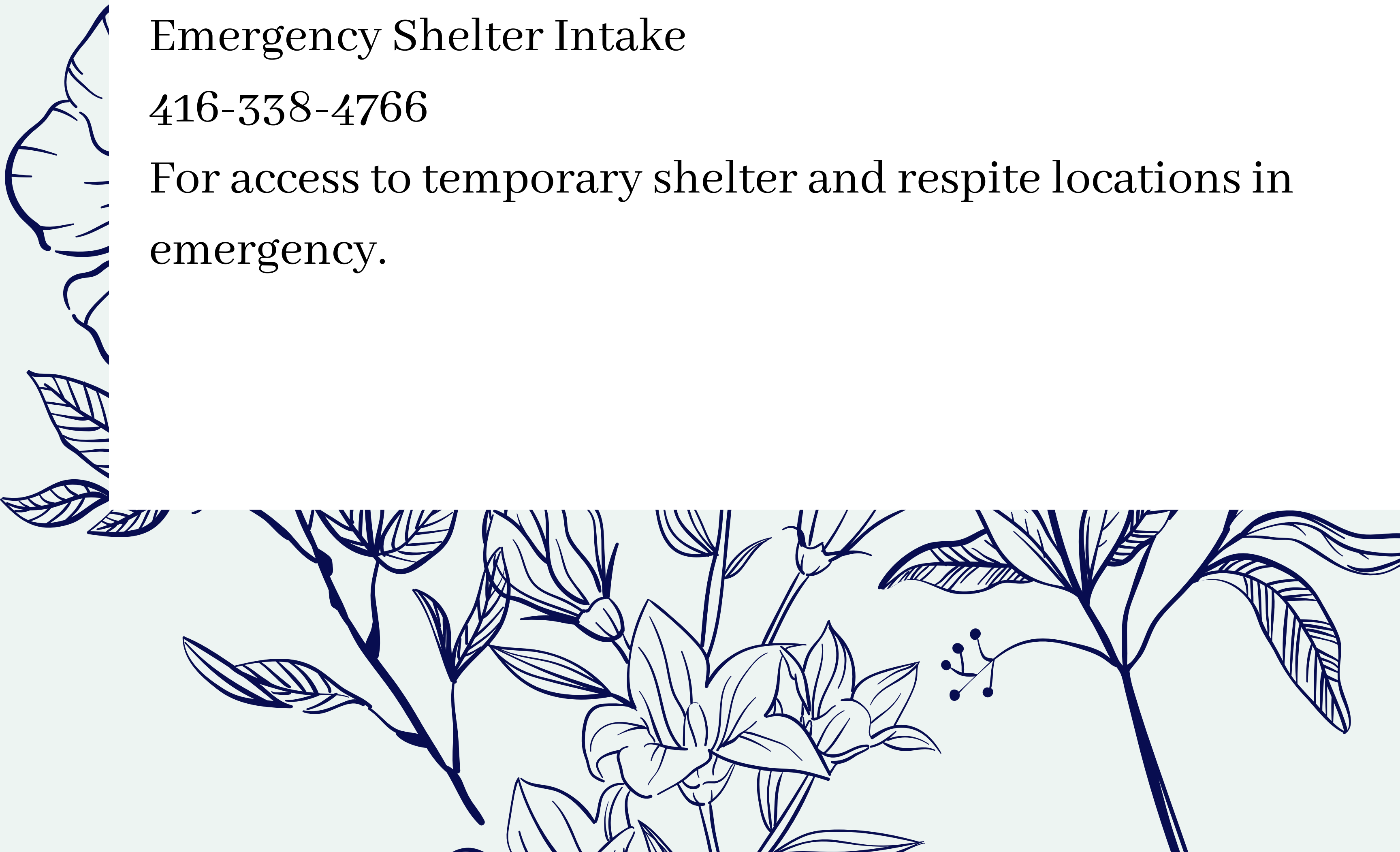
416-609-8187

A multicultural group of midwives in Toronto specializing in client care during and shortly after childbirth. Their mission is to keep inclusiveness as the number one priority and ensuring expecting parents are active decision makers while in their care.

Emergency Shelter Intake

416-338-4766

For access to temporary shelter and respite locations in emergency.



MATCH (Midwifery and Toronto Community Health) -
South Riverdale Community Health Centre
416-461-2493

MATCH offers a wide variety of services related to pregnancy, labour, and birth, as well as postpartum care for infants and adults, well-gynecological care, and pregnancy options counselling.

National Harm Reduction Coalition. Pregnancy and Substance Use: A Harm Reduction Toolkit, December 2020.

Ontario Human Rights Commission. Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare. May 2018.



Reproductive Life Stages Program – Women's College Hospital

416-323-6230

The Reproductive Life Stages program in the Department of Psychiatry of the Women's College Hospital provides assessment and short-term treatment for women experiencing new or recurrent mental health problems during the reproductive life stages (menstrual cycle, pregnancy, postpartum and the menopausal transition).

Seventh Generation Midwives Toronto

416-530-7468

A group of Aboriginal and non-Aboriginal midwives who offer maternity care to women living in Toronto, particularly those from the downtown area, and from the Aboriginal community.



Talk4Healing

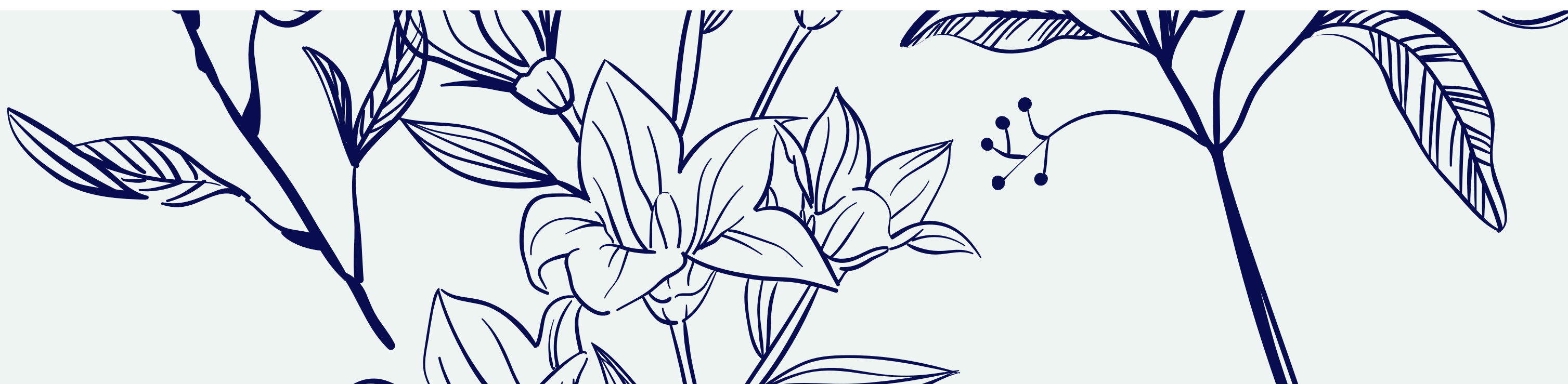
1-855-554-4325

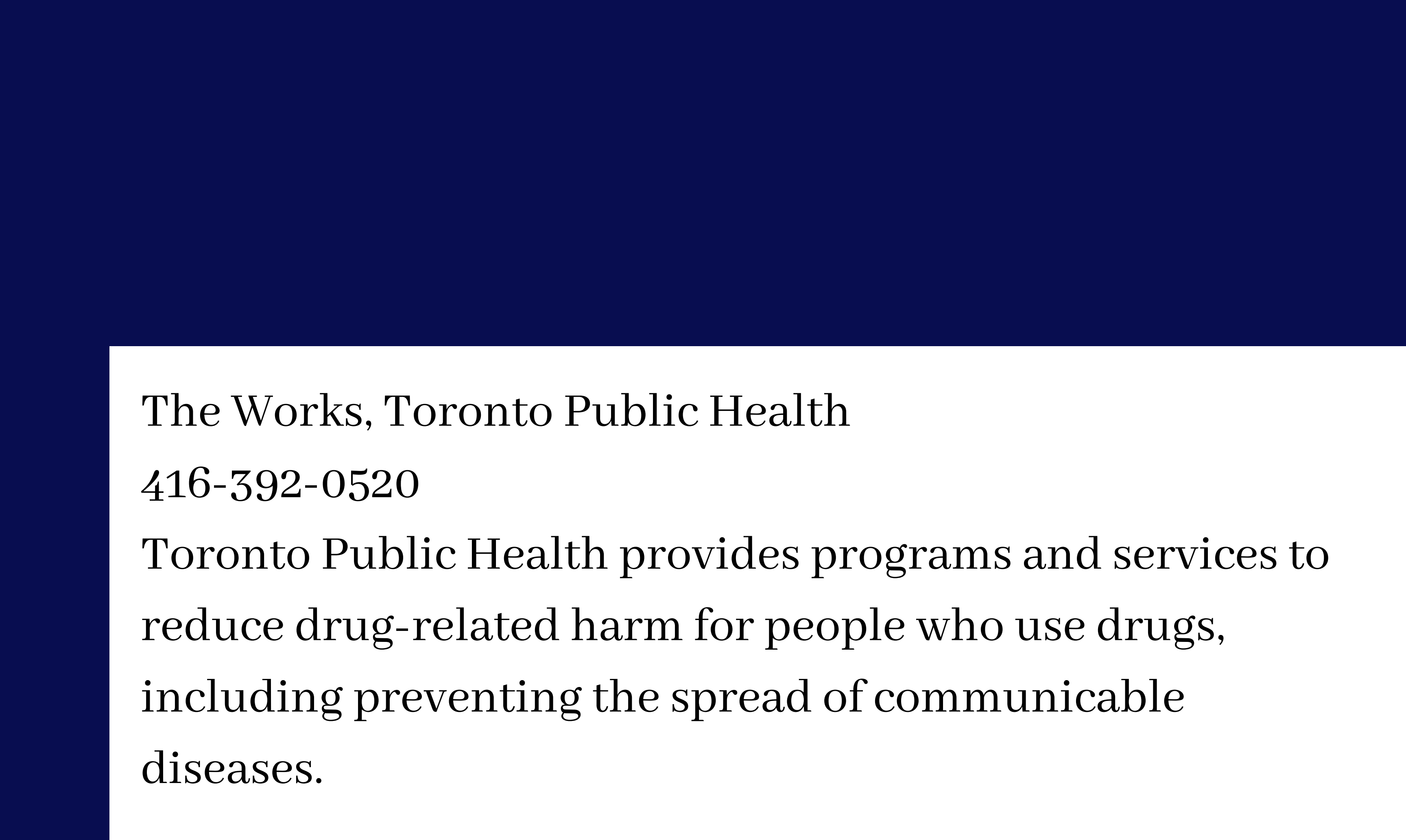
A culturally grounded, fully confidential helpline for Indigenous women available in 14 languages all across Ontario.

Talking Together

807-474-4377

This program is an alternative dispute resolution option created in 2002 to address the child protection needs of families from the Nishnawbe Aski Nation (NAN) communities. It offers a restorative approach for dealing with child protection issues and deals with NAN First Nation families who become involved with a child protection agency. The program services both on and off reserve Band members.





The Works, Toronto Public Health

416-392-0520

Toronto Public Health provides programs and services to reduce drug-related harm for people who use drugs, including preventing the spread of communicable diseases.



Toronto Distress Centre

416-408-4357

Volunteer delivered crisis, emotional support, crisis intervention and suicide prevention, intervention & postvention.

Women's Helpline

1-866-863-0511

Provides crisis counselling, safety planning, emotional support, information as well as referrals for women who are experiencing abuse or domestic violence.



Women's Health In Women's Hands Community Health Centre

416-593-7655

Health services for Black women and Women of Colour in Toronto and surrounding areas.



The following legal clinics do not provide any assistance in child protection cases, but may be able to provide general family law information. They do provide free legal services in areas of law that affect your ability to care for a child, such as housing law, employment law, and income assistance. If any of the legal clinics below is unable to assist you, they may refer you to a lawyer who can. They receive funding from Legal Aid Ontario. Contact them directly for more information.

Aboriginal Legal Services

416-408-3967 / 1-844-633-2886

Operating legal-related programs for Aboriginal people in Toronto.

Black Legal Action Centre (BLAC)

416-597-5831 / 1-877-736-9406

BLAC provides free legal services to low and no income Black Ontarians who are facing a legal issue directly related to anti-Black racism.

Centre for Spanish Speaking Peoples – Legal Clinic

416-533-8545

The Legal Clinic serves members of the Spanish-speaking community across Ontario.

Chinese and South East Asian (CSALC)

416-971-9674

CSALC provides free legal services to low income, non-English speaking clients from the Chinese, Vietnamese, Laotian and Cambodian communities in Ontario.



HIV & AIDS Legal Clinic Ontario (HALCO)

416-340-7790 / 1-888-705-8889

HALCO provides legal services to persons living with HIV in Ontario on issues related to income assistance, tenant housing, immigration and refugee law, employment standards, human rights, privacy law, and health law.

Street Health Overdose Prevention Site

338 Dundas Street East

416-921-8668 x 276

Street Health provides a small, safe, non-judgemental space to inject, swallow, or sniff drugs and access a range of supports. They also provide nursing, case management, harm reduction supplies, identification, a mobile health bus, and safe supply.

South Asian Legal Clinic of Ontario (SALCO)

416-487-6371

SALCO provides advice, brief services, and/or legal representation in a various areas of poverty law to the South Asian community in Ontario.

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