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Submissions on 2023 Review of the Child, Youth and Family Services Act, 2017

CYFSA Review

Ministry of Children, Community and Social Services | CYFSA Review Branch

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Toronto, ON M7A 2T2

Via Email To: CYFSA@ontario.ca

Please accept the following submission by Justice for Children and Youth on the 2023 Review of the Child, Youth and Family Services Act, 2017

Outline

Thank you for the opportunity to provide feedback in the 2023 Review of the *Child, Youth and Family Services Act, 2017* (“CYFSA”). We applaud the Government’s commitment to transparency in building a child welfare system grounded in the rights, interests, and dignity of the young people it services.

In furtherance of the purpose of the 2023 Review of the CYFSA to ensure that every young person in Ontario has what they need to thrive and to succeed, please accept the following submissions from Justice for Children and Youth (“JFCY”), organized in three parts:

- A. An introduction to our organization and expertise
- B. Submissions and recommendations on the six key areas of the 2023 review:
 - i) Child and youth rights
 - ii) First Nations, Inuit, and Metis peoples

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- iii) Equity and anti-racism
- iv) Prevention and community based care
- v) Quality services
- vi) Accountability

C. Summary comments

A: Who We Are: Justice for Children and Youth (JFCY)

JFCY is a non-profit specialty legal clinic and child rights organization with core funding from legal aid Ontario. For 45 years, our organization has focused exclusively on the legal issues facing children and youth, and promoting and protecting their human rights and dignity. We are the only such organization in Canada. We provide legal services, including advice, information, and representation to low-income and vulnerable children and youth in matters affecting their interests, including in the spheres of child welfare, youth criminal justice, education, social assistance, privacy, health, mental health, immigration, and others. We also provide public legal education for young people and the adults who support them, including frontline service providers.

Most of our clients have multiple legal concerns and come to us with complex personal, social, and legal issues, and often, personal circumstances that have brought them into contact with the child welfare system. In 2022, youth with identified involvement with the Children's Aid Society represented almost 50% of all intake calls to JFCY. Our clients frequently face simultaneous legal issues in schools, in the youth criminal justice system, and in other contexts, including social welfare, housing, and employment. They face discrimination, marginalization, and exclusion and barriers in many contexts. We provide multidisciplinary, developmentally appropriate, and trauma-informed legal and non-legal support to our clients.

JFCY also operates a unique legal service specifically directed at homeless, street involved, and unstably housed young people: Street Youth Legal Services ("SYLS"). For over 20 years, SYLS has provided wraparound legal services to street involved young people aged 16-24 years on a wide range of legal matters. A key component of the SYLS program is providing legal options to unstably housed young people to help them find support necessary to stabilize their lives. Many

of these young people find themselves homeless despite past and, in many cases, ongoing involvement in the child welfare system.

Our submissions and recommendations are based on our unique perspective and extensive experience providing services, education, and advocacy across diverse, intersecting legal areas for children and youth engaged with the child welfare system.

B: Submissions on Key Areas of Review

I - Child and Youth Rights

1. What changes to the CYFSA (or its regulations) would help improve how the rights of children and youth are defined and upheld?

A child- and youth-centred approach to the CYFSA and its regulations requires the recognition of children and young people as an equity-seeking group within Canadian society, with human rights as enshrined within the *United Nations Convention on the Rights of the Child* (the “UNCRC”).¹ These rights impose corresponding duties and obligations on communities, service providers, and state actors to recognize young people as individuals with dignity to be respected, promote the exercise of a young person’s rights, and ensure that the young person has the opportunity to meaningfully enjoy those rights to their fullest extent.

In our experience, the human rights of children are not well-understood, even by service providers and institutions that are charged with their care and protection. Children and adolescents are still the subject of discriminatory attitudes about their capacities. Young children are often seen as objects of protection, without any agency, while older youth may experience discrimination related to the fact of their adolescence itself: Widespread negative characterization of adolescence often leads to narrow, problem-focused interventions and services, rather than commitments to building environments that address a young person’s

¹ [Convention on the Rights of the Child, 1989, C.T.S. 1992/3; 28 I.L.M. 1456; 3 U.N.T.S. 1577; G.A. Res. 44/25 \[UNCRC\]](#).

evolving capacities and support the development of their holistic physical, psychological, spiritual, social, emotional, and cultural capacities and identities.²

Understanding and making child and youth rights meaningful requires careful attention to the needs – in particular the self-identified needs - and circumstances of children and young people and respect for their lived experience, as well as the impacts of race, poverty, and systemic discrimination, in order to produce legislation and policy that is responsive to their lives and needs. The introduction of the CYFSA and the expansion of supports for youth under the Ready, Set, Go program represent critical steps towards this goal. However, as frontline service providers, we are concerned that child welfare systems continue to subordinate the rights and voice of children to those of the adults involved in their care.

Recommendation: Defining and realizing the rights of young people in the child welfare context requires the inclusion of the human rights of children into the substantive provisions of the CYFSA. The CYFSA incorporates by reference the UNCRC within the preamble, to which Canada is a signatory and which the Supreme Court of Canada has recognized as being the most universally accepted human rights instrument in history.³ To ensure that these universal rights are meaningful and actionable, we respectfully propose amendments to the *Rights of children and young people receiving services* within the CYFSA to directly incorporate a child’s rights under the UNCRC, including the right to identity; connection to family and community; and to be heard.⁴

Recommendation: In order for children and young people to fully enjoy their rights, systems and service providers must be knowledgeable about the human rights of children and rights-respecting approaches to practice, including, for example, how to make meaningful a child’s right to be heard in the context of service provision and must be held to this standard, consistent with their role as duty-bearers. The Ontario Child Protection Standards should be amended to include specific direction and guidance to service providers about the human rights of children, developed in consultation with child rights

² See: [General Comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence, 06 December 2016, CRC/C/GC/20.](#)

³ [R. v. Sharpe, 2001 SCC 2 at para 177.](#)

⁴ In particular, JFCY urges the amendment of s. 3 of the *CYFSA* to directly incorporate the rights guaranteed in the UNCRC including, *inter alia*, articles 3, 5, 8, 9, 12.

organizations and experts and where possible, young people with lived experience, with appropriate support.

Recommendation: We recommend amendments to the CYFSA to better reflect the actual circumstances of youth. 16- and 17-year-olds frequently meet with significant barriers when attempting to access services from societies. There is significant disparity between societies as to when an older youth will be deemed in need of protection and offered a voluntary youth services agreement. Youth experiencing abuse, homelessness, poor mental health status, or lack of safety in the community face systems ill-equipped to recognize and respond to their circumstances, and are often declined child welfare services notwithstanding their own self-identified needs and disclosures of harm on the basis that the caregiver does not validate their concerns or is not the identified perpetrator of harm. We urge amendments to section 74(2), which defines the circumstances in which a child may be found in need of protection CYFSA, in order to:

- Expand the definition of a child in need of protection to include a young person with capacity to consent who self-identifies as in need of protection. The CYFSA extends the definition of a child in need of protection to a young person brought to court with their caregiver’s consent, in circumstances where the parent is unable to care for the child.⁵ There is no substantive equivalent for a child who self-identifies as in need of protection and asks to be removed from home, with or without the consent of their caregiver. It is our experience as frontline service providers that the child welfare system frequently allocates greater weight to the concerns and priorities of the caregiver rather than the child. A child rights-respecting approach to services must prioritize the voice of the children it seeks to protect, in line with the individual child’s capacity, not their age. This avoids the need for onerous and complex litigation via a third-party application to obtain necessary assistance for a child at risk.
- Employ the regulation making power under section 74(2)(o) the *CYFSA* to set standards for voluntary services to ensure the consistent availability of services regardless of jurisdiction, with conditions and criteria developed in consultation

⁵ *CYFSA*, s. 74(2)(n).

with experts in homelessness, human trafficking, mental health, missing persons, developmental psychology, and child rights.

Recommendation: A rights respecting approach to child welfare services must respect the dignity and individual rights of the child guaranteed under provincial and Canadian law. To clarify the rights of children in the child welfare context, legislation must harmonize the provisions of the CYFSA with the child’s individual legal rights in intersecting areas of their life, including rights to dignity, privacy, and to give consent under the *Health Care Consent Act*,⁶ *Personal Health Information Protection Act*,⁷ the *Children’s Law Reform Act*,⁸ the *Mental Health Act*,⁹ and the *Youth Criminal Justice Act*.¹⁰ Establishing coherent standards and consistency in a child’s rights across legal areas evidences Ontario’s commitment to the basic legal protections and guarantees under the law.

Recommendation: To enhance clarity in terms of a child’s rights under the CYFSA, we recommend the incorporation of the foster language of “rights” in the context of a child’s exercise of their voice in decisions affecting their life and legal interests. This includes the introduction of language to recognize that it is the “views, wishes, and rights” of the child at issue in child welfare proceedings, and not simply the child’s “views and wishes”. These amendments are not merely linguistic but an acknowledgement of the personhood of the child, and their fundamental dignity as a rights holder. For adults, systems, and communities supporting children, these amendments reinforce that it is the child’s legal entitlements, not merely their preferences, that must be given due consideration in making determinations about the child’s care.

The exercise and enjoyment of rights is always consistent with the best interests of the child.¹¹ Amendments to include a child’s rights alongside the child’s views and

⁶ [Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A.](#)

⁷ [Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A](#)

⁸ [Children's Law Reform Act, R.S.O. 1990, c. C.12](#)

⁹ [Mental Health Act, R.S.O. 1990, c. M.7](#)

¹⁰ [Youth Criminal Justice Act, S.C. 2002, c. 1](#)

¹¹ [General Comment no 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14](#), at para 4.

preferences bolster a rights-respecting and child-centred approach to child welfare, as opposed to a paternalistic view of the best interests of the child, as determined by adults.

2. What changes to the act would help services to be more child- and youth-centred? What would help children and youth have a greater voice in decisions affecting their care?

In addition to the foregoing, a child- and youth-centred approach to services means ensuring that children have means and opportunities to learn about, enjoy, and enforce their rights. This necessarily entails connecting young people with ongoing, accessible legal information and advice about their rights and options, as well as access to representation and advocacy to exercise those rights.

JFCY supports the recommendations of the UN Committee on the Rights of the Child that government “ensure that the views of the child are a requirement for all official decision making processes that relate to children, including child welfare decisions”¹² and “that children have the possibility to voice their complaints if their right to be heard is violated”.¹³ This includes affording young people equal access to appropriate legal experts and to participate in proceedings that affect them.

Access to counsel is necessary to access to justice and procedural fairness in the child welfare process. Equal access to legal representation and advocacy for young people requires legislative amendments to include mandatory notice provisions in circumstances affecting a child’s legal rights and interests. Expanding a child’s right to counsel under Part V of the CYFSA beyond the litigation context brings the child welfare system closer in line with the lived reality of the young people it serves. It recognizes that the impact of decisions regarding a child’s care is not limited to simple legal categories. A child’s safety, well-being, and legal rights after being removed from home are equally affected whether the removal is effected by the means of a voluntary agreement, alternative dispute resolution, or litigation proceeding.

¹² [Concluding observations on the combined fifth and sixth periodic reports of Canada, UNCRC, 90th Sess, UN Doc CRC/C/CAN/CO/5-6 \(2022\) at para 22\(c\) \[Concluding observations\].](#)

¹³ *Ibid.*

Recommendation: We urge the expansion of legislated notice requirements in the context of voluntary agreements pursuant to s. 75, 76, and 77.¹⁴ The legal affect of an agreement executed under these sections is tantamount to that of an initiating child protection application. As recognized by the Court of Appeal *Kawartha-Haliburton Children’s Aid Society v. M.W.*, procedural fairness must recognize the “significant imbalance”¹⁵ between child welfare agencies as state actors, and child protection litigants, whose lived reality is frequently marked by “poverty and other forms of marginalization”.¹⁶ These vulnerabilities are compounded for young peoples, who frequently experience systemic disenfranchisement by virtue of age. Access to independent legal advice, information, and representation is a critical safeguard against the power imbalances inherent in child welfare in agreements executed without judicial oversight.

JFCY commends the continued cultural shift in services for 16 and 17 year olds following the introduction of Voluntary Youth Services Agreements (“VYSA”), to recognize the autonomy and evolving capacities of young people. For many young people, a VYSA makes housing, access to services, and basic financial security to provide for necessities a possibility where no other alternatives exist.

Recommendation: Recognizing the critical role of VYSAs to many young people across the province, we urge the Ministry to amend s. 77 to delineate the terms of eligibility and notice to counsel currently included in policy directive CW-003-18 into the CYFSA. As advocates, we are highly concerned by the divergence in the practice of child welfare agencies under this directive.¹⁷ Access to critical services and supports guaranteed under the legislation must be determined based on clear needs-based criteria, not geographic location and unfettered agency discretion, without option for review.

¹⁴ Although sections 75, 76, 77, and 77.1 are included under Part V, the necessity of a Court order for representation pursuant to s. 78 renders any rights to representation therein ineffective in the context of voluntary agreements, which are by definition, out of court processes.

¹⁵ [Kawartha-Haliburton Children’s Aid Society v. M.W.](#), 2019 ONCA 316, at para 69.

¹⁶ *Ibid.*

¹⁷ In particular, we are concerned by the failure to notify Office of the Children’s Lawyer Counsel in circumstances where the young person requests a VYSA, contrary to Ministry policy directives.

Finally, we urge the implementation or recommendation 13(c) of the Concluding Observations to restore the mandate of the “entire previous mandate” of the former Office of the Ontario Child Advocate (“OACO”).¹⁸ Proactively providing ongoing accessible information about available advocacy organizations, including the Ombudsman’s Office, Justice for Children and Youth, and the Office of the Children’s Lawyer, is an essential part of supporting a young person’s exercise of agency. We strongly applaud the extensive efforts of advocates and service providers to close the gaps to this end following the dismantling of the OACO. The legislation must substantiate these actions through robust provisions to guarantee young people ongoing access to information about their rights, recourse, and representation.¹⁹

Recommendation: Amend the CYFSA and Ontario Child Protection Standards to require referrals to legal services at key stages of a young person’s involvement in the child welfare, youth justice, and mental health systems and ensure ongoing access to legal and advocacy help.

Recommendation: Amend the CYFSA to expand upon the mandate of the former OCAO to empower and resource the Ombudsman’s Office to, *inter alia*, initiate and undertake systemic investigations of child welfare, youth justice, residential, and secure treatment services, and build ongoing relationships with young people that are not constrained to a limited dispute resolution capacity.

3. What changes to the act would help improve the collection and use of personal information and access to such information, particularly for children and youth?

Systemically, Ontario’s child welfare system necessitates the disproportionate monitoring and loss of control over personal information for children engaged in child welfare system. Building a collaborative network of personal and professional supports for youth and ensuring institutional transparency to protect the physical safety of the children in their care are laudable goals.

However, the advancement of these goals in raising standards within the child welfare system cannot compromise the robust protection for a young person’s rights to privacy. Child-centred

¹⁸ *Concluding Observations*, at para 13(a).

¹⁹ In particular, we urge amendments to advise as to the existence of the Ombudsman’s Office, Justice for Children and Youth and the Office of the Children’s Lawyer under s. 3(6) in the context of children receiving services, s. 15(5) as purports to the duties of service providers, and s. 18(2) in the context of dispute resolution and complaint mechanisms.

services require recognition of the child's agency and dignity that does not subordinate the child's individual rights to efficiency.

The collection, retention, and sharing of this information undermines trust and confidence in child welfare actors and creates potential legal prejudice for the child. We are aware of many cases in which a young person's information is shared without their consent. This includes cases where a young person is seeking services on their own behalf and information is disclosed to a caregiver without their prior informed consent, often with significant impacts on the young person's emotional and sometimes physical safety. Other examples include the disclosure of information that ought to be protected under Part X in youth justice proceedings, or the use of protected information about justice involvement in child welfare proceedings contrary to the provisions of the *Youth Criminal Justice Act*, resulting in a serious infringement on the young person's protected rights.

Societies collect and retain vast amounts of intensely personal information about children and young people, yet Part X fails to address the retention and destruction of this highly sensitive information once children have aged out of care, and is vulnerable to misuse and inadvertent disclosure. For example, this historical information may be accessed and used subsequent child protection proceedings where a person is subsequently involved as a parent, and may be used in discriminatory and detrimental ways to assess their present parenting. Bill 237: Fostering Privacy Act was previously proposed to address these concerns, but died on the order paper when an election was called in 2022.

Recommendation: We recommend amendments extend the legal protections available to young people under Ontario law within the child welfare context. In particular, we propose the inclusion of conditions under s. 300 of the CYFSA to ensure the collection, use, and disclosure of personal information by service providers is consistent with the young person's rights and protections in accordance with the *Health Care Consent Act*, the *Personal Health Information Protection Act*, and the *Youth Criminal Justice Act*.

Recommendation: We recommend legislative or regulatory amendments to the CYFSA to implement a records access and destruction regime that balances legitimate uses of personal information with the protection of privacy interests of young people formerly in care against inadvertent disclosure of their personal information, and governs the use of

that information in any subsequent proceeding to prevent uses that reinforces negative stereotypes about children in care or perpetuates intergenerational harms.

In our experience, young people with current or past child welfare involvement further experience disproportionate barriers to accessing their own personal information, including documents, records, and assessments to which an individual without past child welfare involvement would have access. Notwithstanding the information is about them, young people are often told that information cannot be shared without a parent's consent, despite circumstances rendering it unreasonable or unsafe to seek this consent.

Recommendation: We recommend explicitly delineating that young people are entitled to access information about themselves held by societies, without the need for the consent of another person, regardless of their age, including information about investigations and coming into care.

II: First Nations, Inuit, and Metis Peoples

The introduction of the CYFSA represented a step forward in the recognition of the rights of First Nations, Inuit and Metis children, families, and their communities, with the Preamble acknowledging: the unique and evolving relationship between First Nations, Inuit, and Metis peoples with the Province of Ontario, the constitutional recognition of First Nations, Inuit, and Metis peoples and their distinct laws, cultures, and histories, the importance of Jordan's Principle, and the rights affirmed under the *United Nations Declaration of the Rights of Indigenous Peoples*.²⁰ The Act makes provision for the recognition of the rights of First Nations, Inuit, and Metis children, families, and communities at all stages of their involvement with the child welfare system.

Yet there remains significant work to be done to continue to move towards reconciliation and address the historical and ongoing harms of colonialism, residential schools, and cultural genocide, in addition to the displacement, loss, erosion of cultural identity, and intergenerational trauma that children and their families continue to experience within the child welfare system

²⁰ [United Nations Declaration on the Rights of Indigenous Peoples, UNGA, 61st Sess, UN Doc A/RES/61/295 \(2007\) \[UNDRIP\]](#).

and society at large. Continuing negative outcomes for Indigenous children demonstrate the dire consequences of the failure to protect and promote the rights of Indigenous children.

UNDRIP entrenches the fundamental right of Indigenous families and communities to retain shared responsibility for the upbringing, education, and well-being of their children. The UNCRC further recognizes the right of Indigenous children to enjoy his or her own culture, religion, and language.²¹ Pursuant to General Comment No. 11, the Committee on the Right of the Child urges the creation of specially targeted policy measures developed in consultation with Indigenous communities to combat the overrepresentation of Indigenous children in out-of-home care, prevent the community's loss of cultural identity, and support the individual child in maintaining his or her own cultural identity.²²

Myriad public inquiries and inquests, including the Truth and Reconciliation Commission: Calls to Action, the National Inquiry Into Missing and Murdered Indigenous Women and Girls, the Report of the expert panel on the deaths of children and youth in residential placements (“Safe With Intervention”), and most recently, the Inquest into the death of Devon Freeman, have issued recommendations to redress the harms of colonial systems in Canada and improve outcomes for First Nations, Inuit, and Metis children. These recommendations must continue to inform the development of legislation, regulations, policy, and service delivery standards.

The recommendations in this section outline considerations to address the distinct history, circumstances, and experiences of First Nations, Inuit and Metis communities and their children. The commentary and recommendations otherwise contained in these submissions apply equally to Indigenous children and young people.

4. What kinds of barriers are faced by First Nations, Inuit, and Metis children, youth and families when trying to access culturally responsive services? What changes to the CYFSA (or its regulations) would make it easier for First Nations, Inuit and Metis children, youth and family to access culturally responsive services?

Children and young people's access to culturally responsive services is most notably hampered by the unavailability and/or disparity of availability of these services. Where services do exist, they may employ a pan-Indigenous approach to cultural connection and ceremony, which may

²¹ UNCRC, article 13.

²² [General Comment No. 11 \(2009\) “Indigenous children and their rights under the Convention” 30 January 2009, CRC/C/GC/11, at para 48.](#)

not be meaningful or relevant for young people experiencing displacement and disconnection from their First Nation and community. Where placements outside the home are necessary, many communities lack available resources, exacerbating the displacement and disconnection of First Nations, Inuit, and Metis children from their communities and cultures, with dire impacts on their well-being, identity, and sense of belonging.

Recommendation: Consistent with the recommendations of the Devon Freeman Inquest, we recommend the development of models of service that emphasize and actualize the right of children and young people to have meaningful, lifelong connections to their family, community, and culture; a sense of belonging; and physical, cultural and emotional safety, including through access to land-based learning and Indigenous mental health services. From the commencement of child welfare involvement, the child’s plan of care must reflect the child’s spiritual and cultural identities, with ongoing obligations on service providers to seek out opportunities to create connections with community and culture.²³

We urge the Ministry to continue to work towards the adoption and implementation of “Devon’s Principle” to ensure that First Nations children have a right to return to their home communities when receiving child welfare services.²⁴

Recommendation: We recommend the increased availability of culturally responsive services – including allocation of adequate funding to build the capacity of Indigenous child well-being agencies – to ensure that children are able to access culturally responsive services and resources, regardless of their region of residence, without the need to leave their home and community.

MCCSS should develop standards and regulations – supported by adequate resources - to establish independent and semi-independent living arrangements to assist older youth to live safely in their communities without resort to homelessness resources.

²³ [Office of the Child Coroner, Inquest into the Death Devon Freeman, recommendation 6.](#)

²⁴ *Ibid*, recommendation 59.

Recommendation: Provide equitable funding and resources for the development and delivery of culturally safe family care, prevention and support services, and support local capacity for early response to needs.

5. What changes to the act would support First Nations, Inuit, and Metis peoples exercise jurisdiction over child and family services so that they can provide, wherever possible, their own child and family services?

The federal *Act respecting First Nations, Inuit, and Metis Children, Youth and Families* represents a significant step forward in the recognition of Indigenous peoples' jurisdiction over child and family services, as part of their inherent and Aboriginal right to self-governance.²⁵ However, without adequate support to communities, the full realization of these rights remains illusory, and may simply perpetuate the current inequities experienced by Indigenous children in the child welfare system.²⁶

Recommendation: We recommend the development of legislative amendments that affirm the jurisdiction of First Nations, Inuit, and Metis communities over child welfare and the obligation of the Ministry to actively consult with communities. We urge the Ministry to support the development of coordination agreements and capacity within communities; ensure adequate funding, resources, and support is available to communities seeking to assume jurisdiction; and to commit to the application of Jordan's Principle where disputes over funding may arise.

6. The CYFSA outlines obligations for services to First Nations, Inuit and Metis children, youth and families under the act, such as consultations with bands and communities, providing access to customary care and that services should recognize their distinct identities. What changes to the CYFSA would help service providers better meet these obligations?

The unavailability of alternatives to care, combined with standards that perpetuate damaging colonial and discriminatory notions of family and care, continue to drive the over-representation of Indigenous children in state care. Addressing these inequities involves a process of decolonization of child welfare standards, and recognition and honouring of Indigenous ways of

²⁵ [An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24.](#)

²⁶ Yellowhead Institute: *The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit, and Metis Children, Youth and Families*, July 4, 2019, available online at: <https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf>.

knowing and being, consistent with the rights to safety, culture, community, and family belonging to every child.

Recommendation: We recommend amendments to the Ontario Eligibility Spectrum and the adoption of a needs-based, rather than deficits-based approach to supporting families, to ensure that Indigenous children are provided early access to culturally responsive preventive and supportive services at an early stage with a view to avoiding more intrusive interventions.

Recommendation: We further recommend the development of non-coercive, non-intrusive services responsive to the distinctive experiences and needs of First Nations, Inuit, and Metis children, family, and communities, outside of the colonial child welfare framework, with support for the development, transition and implementation by Indigenous child well-being societies of their own models of care.

Recommendation: In consultation with First Nations, Indigenous child well-being agencies, and urban Indigenous services providers, we recommend the development of regulations to support the implementation of framework to distinguish licensing requirements in the context of customary care from out-of-home placements, to foster the well-being of children and their ongoing connection to their community, culture and identity.

Recommendation: In accordance with the jury recommendations following the Devon Freeman Inquest, we recommend the enactment of a legislative duties to engage early and often with First Nations, Inuit, and Metis communities, delineating necessary steps that child welfare actors must take in order to identify and meaningfully engage with a child's Indigenous community in service planning, including the use of circles, access to ceremony, the inclusion of Elders and other community members in the child's circle of care, opportunities for the child to learn about his or her distinctive culture, as well as opportunities for families to re-connect with their community and culture. Identification of safe placements for children and young people both on- and off-reserve must be undertaken in consultation with the community.

Recommendation: Ensure that Jordan’s Principle is reflected at each stage of a child, youth and family’s involvement with a society to ensure service providers are empowered to offer services and resources to Indigenous children – both living on- and off-reserve – without delay. Engage with the federal government to ensure the availability of adequate funding for Indigenous children and young people’s needs.

Recommendation: Ensure as a condition of licensing and funding that societies implement a plan for adequate education and training of society staff and staff providing residential care to Indigenous children with respect to the unique history, circumstances, and needs of Indigenous peoples and children and families, and the need for culturally responsive care plans and plans for healing, including the recognition of the impact of intergenerational trauma.

III: Equity and Anti-Racism

7. Black, Indigenous, and other racialized populations, and children and youth with disabilities are overrepresented in services, such as child welfare and youth justice. What changes to the CYFSA (or its regulations could help reduce this overrepresentation?

Addressing the inequities and disparities experienced by children and youth from equity-seeking groups requires careful attention to the actual self-identified needs of individuals and families with these identities, and systems and services that are responsive to these lived realities.

Transformative action is needed to identify and overcome systemic and individual biases that contribute to the disproportionate representation of in the child welfare and other systems of racialized children and young people, children and young people with disabilities and complex needs, and children and young people experiencing marginalization, discrimination, and exclusion on the basis of their identities.

The problem of the over-representation of Black, Indigenous and other racialized children and young people at all stages of contact with the child welfare system is well-documented: See, for example, the *Ontario Incidence Study of Reported Child and Abuse and Neglect – 2018*,²⁷ One

²⁷[Fallon, B., Filippelli, J., Lefebvre, R., Joh-Carnella, N., Trocmé, N., Black, T., Stoddart, J. et al., \(2020\). Ontario Incidence Study of Reported Child Abuse and Neglect-2018 \(OIS-2018\). Toronto, ON: Child Welfare Research Portal.](#)

Vision One Voice's *Understanding the Over-Representation of Black Children in Ontario Child Welfare Services*,²⁸ and the Ontario Human Rights Commission's *Under Suspicion: Concerns about child welfare*²⁹ and *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare*.

The trauma occasioned by a child's removal from their family of origin contributes to negative trajectories for children and young people, including higher rates of homelessness, lower levels of educational attainment, low income, high unemployment, and increased chronic health problems for children, as well as greater vulnerability to involvement in the youth criminal justice system and vulnerability to exploitation. Children placed away from their community or with a non-Black family may experience feelings of alienation from family, community, and a loss of connection to culture and identity compounding the existing trauma inherent in separation from a primary caregiver.³⁰

We strongly commend the comprehensive recommendations developed by the One Vision, One Voice program to address the systemic racism and discrimination experienced by racialized groups in the child welfare system,³¹ in addition to the inquest and commission recommendations cited in Part II.

Recommendation: We recommend that regulations be developed to mandate the adoption of comprehensive plans requiring all staff and Boards to undertake regular anti-bias training delivered by subject matter experts and persons with lived experience.

Recommendation: Societies continue to rely on risk assessment standards and investigatory tools that privilege white, colonial perspectives and fail to account for the structural inequalities and systemic discrimination that contribute to poor outcomes for racialized children, instead unfairly attributing these outcomes to individuals and

²⁸ [Bonnie, N. & Facey, K., with support from King, B., Fallon, B., Joh-Carnella, N., Edwards, T., Kagan-Cassidy, M., Black, T., Patrick-Drakes, V., & Anucha, C. \(2022\). *Understanding the Over-Representation of Black Children in Ontario Child Welfare Services*. \(Ontario Incidence Study of Reported Child Abuse and Neglect-2018\). Toronto, ON: Child Welfare Research Portal.](#)

²⁹ Ontario Human Rights Commission, *Under Suspicion: Research and consultation report on racial profiling in Ontario*, April 2017. Online at: <https://www.ohrc.on.ca/en/under-suspicion-concerns-about-child-welfare>

³⁰ [Ontario Human Rights Commission, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare*. February 2018, Section 4.4 – Impacts of being taken into care.](#)

³¹ Online at: https://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-2_digital_english-May-2019.pdf

families. We recommend the review of the Ontario Eligibility Spectrum and development of risk assessment tools, in consultation with affected communities, to support child welfare actors in distinguishing real risks to safety and well-being and the impacts of systemic and structural inequalities on marginalized communities.

Recommendation: Addressing systemic racism and structural inequalities requires a sea change in the provision of child welfare services towards community-based and prevention-focused care, and away from intrusive interventions. This includes the allocation of adequate funding and resources towards accessible community-based services outside the child protection system, recognizing the fear of coercive state intervention in the family may itself act as a barrier to early engagement with supports.

Children with disabilities and complex needs experience significant barriers in obtaining appropriate assessments, treatment, resources, and support in the community health and education systems, leading to their over-representation in both the child welfare and youth justice systems. The scarcity of community services for high needs children frequently leaves families with no choice but to seek child welfare or law interventions in order to obtain respite, treatment, residential placements, and supportive services. These systems are overwhelmingly ill-equipped to recognize and respond to the disability-related needs of children and young people, particularly for those with intellectual and neurodevelopmental disabilities, often responding with problem-focused interventions or behaviour management strategies, rather than lifelong coordinated services that address underlying needs.

Recommendation: We recommend mandatory training with respect to complex, disability-related needs and the impacts of trauma for service providers across systems, including the child welfare, youth justice, and children's mental health systems. This includes dedicated training to support service providers to distinguish between biases stemming from negative stereotyping of adolescents, and disability- and mental-health needs.

Recommendation: The Ontario Child Protection Standards should be amended to require that assessments be considered and accessed at all stages of a family, child, or young person's contact with service providers, and particularly where a child or young person is receiving ongoing services or is brought into care.

Recommendation: Regulations providing for coordinated care across systems should be developed, including defined pathways for referrals and access to services for children and young people with complex needs, with the system of first contact serving in a case management capacity, consistent with a young person with capacity’s informed consent, to ensure access to and continuity of care.

Recommendation: In addition to robust resourcing of community-based and prevention-services, the children’s health and mental health systems require adequate funding and resources to ensure that services for children are available at an early stage without the need to bring children into care to ensure that they can receive supportive services, where no other protection concern exists.

While there is a pressing need to reduce the overrepresentation of Black, Indigenous, racialized young people and young people with disabilities in the child welfare system, we caution that this laudable goal not compromise the provision of care and services to young people who have self-identified needs for child welfare supports. In our experience, initiatives that seek to reduce the incidence of children in care without due weight to a young person’s self-identified needs risk further entrenching the victimization and disadvantage of the most vulnerable members of the community: children in seeking support.

Recommendation: As in Part I, we recommend the development of needs-based, rather than narrow problem- or deficits-based, determination of eligibility, which does not depend solely on the identification of a caregiver-centred concern. Service providers should be provided with education and tools to ensure that they are not intervening, or declining to intervene, on the basis of bias, assumptions, or stereotypes, but rather offering services that respond to individualized circumstances and lived experiences of young people.

8. What changes would better enable services to be culturally appropriate, trauma-informed and responsive to the unique needs of overrepresented communities?

9. What changes could be made so that policies, tools, and protocols are equity-based, culturally appropriate and sensitive to issues of individual and systemic biases?

Recommendation: Services must be responsive to the needs of the communities, families, and young people they are intended to serve. The development of needs-based interventions consistent with the lived realities of children and young people with diverse identities requires ongoing consultation with affected communities. Such consultation should be mandated at all levels, including the Ministries of Health and Children, Community and Social Services. We encourage the ongoing implementation of community roundtables, in addition to other opportunities for meaningful community consultation, in the ongoing review and development of services and practices.

Recommendation: We recommend the development of robust internal and external complaints mechanisms to ensure that people receiving services have expeditious and responsive avenues to address problems as they arise. We urge the standardization of internal complaint processes across child welfare agencies, alongside province-wide transparent information as to how to access these processes. Equity informed alternative dispute resolution procedures should be developed and expanded accessible at all stages of child welfare involvement, with meaningful opportunities for all participants, including the subject child, to obtain information, support, and representation.

Recommendation: The Ontario Eligibility Spectrum and risk assessment tools must be re-developed, in consultation with affected communities, to ensure that they are sensitive to the impact of structural inequalities disproportionately impacting racialized and otherwise marginalized communities, and attentive to individualized circumstances, lived realities, and self-identified needs of those receiving child welfare services.

Recommendation: Collection of race-based and other demographic data should be enhanced to not only monitor incidences of abuse and neglect, but outcomes for young people receiving services to identify disparities for, and encourage systemic responses to, groups experiencing disproportionately negative outcomes.

IV: Prevention and Community-Based Care

10. What changes could improve access to prevention, early intervention and community-based services for children, youth and families in need of those services?

Youth engagement in early intervention, prevention services and community based supports requires services that are appropriate, beneficial, and supportive from the perspective of the

child, grounded in the principle that the young person is the expert in their own life. Ensuring dignity and respect for the young person in these circumstances means supporting the child's exercise of agency and autonomy, without substituting the child's wishes with those of the adults supporting them.

As an inherently disadvantaged group in Canada, young people experience disenfranchisement and a denial of participatory rights that frequently compounds existing inter-generational trauma, experiences of marginalization, and distrust of child welfare actors for the individual child. Young people in the child welfare system frequently experience particular vulnerability and intersecting grounds of disadvantage, such as homelessness, poverty, racialization, struggles with mental health and substance use, poor educational attainment, experiences of abuse and neglect at home, engagement in the child welfare system, and discrimination on the basis of gender or LGBTQI2S+ identity. In our experience, child welfare systems and service providers often struggle to respond to these lived realities, leading to negative outcomes, such as criminalization and enmeshment with the youth criminal justice system.

For young people in crisis, systems must prioritize the child's self-identified needs, and listen to their voice and communicative actions without resort to the criminal justice system or other punitive, coercive measures. Meaningful child welfare services must meet the needs of the child, not the other way around. The ongoing delegation of child welfare issues to the criminal justice system, particularly in the context of complex presentations of trauma, mental health, and disability, exacerbates rather than attenuates the risks experienced by young people in the child welfare system.

Recommendation: We urge the expansion of the Child Protection Standards and Policy Directives to establish best practices, in addition to standards and expectations for child welfare workers, and foster care providers to minimize the involvement of youth receiving child welfare services in the justice system. This must start with the recognition in accordance with the UN *Standard Minimum Rules for the Administration of Justice* that youth detention as an avenue of last resort. This includes ensuring no young person is held in custody due to the unavailability of child welfare placements, and clarifying the role of release conditions as a mechanism of the youth criminal justice system, as

opposed to a tool to address behavioural issues that present challenges to the child welfare system.

Listening to and actioning the self-identified needs of young people, without substituting the priorities of service providers or caregivers, is a critical tool in reducing exploitation and victimization, and strengthening prevention and intervention services. This is of particular significance for 16- and 17-years-olds, who continue to face skepticism by child welfare actors in proactively seeking child welfare services, including financial support to meet basic needs. False assumptions that a young person is “doing it for the money” continue to persist. This attitude problematically treats voluntary youth services as a form of social assistance, as opposed to a child welfare service, contrary to the provisions of the CYFSA.

Recommendation: In consultation with youth, implement consistent standards and best practices for the delivery of voluntary youth services. Child welfare systems continue struggle to understand the child protection needs of 16- and 17-year-olds, resulting in divergent and, at times, contradictory, standards as to eligibility for VYSA supports for youth navigating the transition between childhood and adulthood. This includes inconsistent practices towards critical services needed by youth, such as housing: in one jurisdiction, foster homes are deemed “unavailable” for youth on a VYSA while, elsewhere in Ontario, a youth is denied a VYSA unless they will enter a foster home as part of their VYS plan. These discrepancies have serious consequences for young people, for whom VYSA supports, including housing and income assistance, are often a critical factor in reducing vulnerability to victimization and exploitation.

11. What changes to the act could enable service providers to better respond to issues such as mental health and addictions, exposure to violence, or human trafficking and minimize the risks posed for survivors/victims?

Meaningful responses and the minimization of risk for young people navigating mental health and addictions, exposure to violence, victimization and trafficking must be grounded in consent based services, rather than behaviour modification and punitive action. Legislative provisions that further undermine exercises of autonomy by a young person who has already been subject to coercive, violent, or exploitative behaviour run contrary to the purposes of the CYFSA.

For victims of trafficking and sexual exploitation, the use of coercive measures such as apprehension and detention pose a serious risk of harm and re-traumatization, and further alienates victims from service providers and child welfare supports. Holding victims against their will does not support the development of a trusting relationship with service providers. A vulnerable young person is unlikely to differentiate between detention that is intended to assist them and detention that is punitive.

Recommendation: We strongly recommend the repeal of section 77.1 to the CYFSA. No other legislation in Ontario permits the detention and, as a consequence, the deprivation of liberty, of victims of crime. It is an exercise of state power that places the exertion of control over the commitment to fostering consent-based, rights respecting child services that address the underlying factors that increase vulnerability to trafficking, including mental health, addiction, unstable housing, and past victimization. This should be replaced with provisions that assist service providers to understand the unique needs of children who have been victimized and to provide supportive and responsive services.

Supporting child survivors requires a recognition that family violence is not limited to intimate partner relationships; it includes the exercise of coercive control and acts of violence by a caregiver against their child, which in our experience, are under-recognized by service providers. The overwhelming majority of youth receiving child welfare services have survived family violence in some form. The delivery of intervention and prevention services must recognize that the reality that children are frequently the subject of, not merely the witness to, acts of violence, control and coercion.

The failure to recognize family violence experienced by children erodes trust in child welfare services and potentially places the young person at a substantial risk of future violence and abuse. This includes circumstances in which a child reporting abuse is required to attend counselling, mediation or other forms of alternative dispute resolution with the perpetrator as a condition of the child victim receiving child welfare support services.

Recommendation: We propose the amendment of the CYFSA to incorporate the definition of family violence under the *Children's Law Reform Act* and the *Divorce Act*. As the framework for the delivery of child welfare services throughout the province, the

CYFSA must reflect best practices, informed by evidence-based understandings of coercive control and abusive dynamics within the family.

V: Quality Services

Quality service provision depends in large part on the availability of adequate community resources that are responsive to the needs of families, children, and young people, including the self-identified needs of children and young people. Increases in funding without structural changes to the way eligibility for service is identified and services are provided will not improve service delivery, particularly for young people who continue to struggle to have their needs recognized under the current Act and regulations. The recommendations throughout this document – including robust recognition of children’s rights and voices, attention to the lived realities of young people, including the systemic and structural barriers that young people with diverse identities face, and emphasis on needs-based community and preventive services – all serve to enhance the quality of service provided to young people, in addition to the recommendations captured in this section.

14. What changes to the CYFSA (or its regulations) would improve the delivery of high-quality services to children and youth, and their families?

The Act as currently structured focuses on the identification of protection concerns in a parent- and care-giver centred manner, leading to reactive and problem-focused interventions rather than preventive care that builds upon the assets and strengths of families and communities.

For young people, and in particular young people who are seeking services via Voluntary Youth Services Agreements, in our experience, they are denied access to care, support, and service where a protection concern in which a parent or caregiver is implicated, in some cases for discriminatory reasons, including the prioritization of adult perspectives and priorities over those of a young person, negative stereotypes that characterize young people as defiant or troubled but at the same time lacking capacity and agency, or restrictive interpretations of their mandate.

Recommendation: Eligibility for services should be determined on the basis of need, rather than deficit, to ensure strength based responses that support the young person, the family, and the community.

15. What changes to the CYFSA would help reduce barriers to more integrated and coordinated services for children, youth, and families with multiple challenges or complex needs?

Societies often serve as both the point of first contact as well as the contact of last resort where families are seeking services for children with complex needs, or where children and young people are seeking these services for themselves, even where no other protection concern exists. This is particularly the case where appropriate services – such as mental health and trauma care, disability services, and residential and housing services – do not exist elsewhere in the community.

Recommendation: To bolster that bolster access to tailored supports without recourse to intrusive state intervention into the family, where requested by the young person and their family, the Act and its regulations should provide avenues to establish coordination agreements with other community and health services to develop responsive referral pathways and collaborative service plans.

VI: Accountability

14. Do you know of any gaps that exist in how service providers comply with the CYFSA (or its regulations)? What changes can be made to the act's accountability requirements to improve compliance and help improve outcomes for children, youth and families?

We commend the government's ongoing commitment to increased accountability within the child welfare system, including in the undertaking of this inaugural five year review.

Meaningful avenues of recourse and redress are a necessary condition for the voices of children, youth and families engaged in the child welfare system to be heard. In our experience as advocates, many youth clients are left without recourse to external mechanisms to address complaints going to the core of their emotional and physical safety and well-being. Further to our submissions in Part I, access to timely information regarding available supports and advice, including the Ombudsman's office and legal resources, is an essential condition for young people's voice to be heard in the child welfare system.

Recommendation: We recommend amendments to the legislation and the Ontario Child Protection Standards to place duties on service providers to ensure timely access to legal, advocacy, and dispute resolution representatives for children and young people seeking

or receiving services from societies, including information about who to contact and how they may be contacted.

Increasing transparency and accountability must also recognize the heightened importance of these principles in the exercise of physical force on a young person by the state pursuant to the CYFSA, including the use of mechanical restraints and secure de-escalation (or “solitary”). The use of mechanical restraints and secure de-escalation rooms engages the young person’s *Charter* protected rights to life, liberty and security of the person in deeply intrusive, and, at times, substantially harmful ways. The 1990 United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* states the use of closed or solitary confinement of children is prohibited. Multiple inquests have raised concerns about the use of these extraordinary measures and their profound impact on the life and safety of children in Ontario.

Recommendation: We urge repeal of the use of mechanical restraints and secure de-escalation within the CYFSA. In the alternative, we strongly recommend the amendment of the CYFSA to introduce meaningful accountability measures in the employment of these extra-ordinary measures, including legislative rights to appeal and rights to representation.³²

15. There is a need to balance strong reporting and compliance measures, with the time service providers need to spend on providing direct services to children, youth and families. Do you have any suggestions on how the act can better support service providers to balance both needs?

The implementation of child welfare reform that raises up the child through accountable, transparent services without unduly encumbering service providers requires careful attention to develop robust standards of communications, reporting, and case planning and file management. The development of streamlined, collaborative, team-based reporting is an essential safeguard to minimize risk and reduce harm for children in care. Challenges accessing case information and barriers to internal collaborative information-sharing within societies result in the loss of important knowledge and data relevant to the child’s safety and well-being, and unnecessarily encumber child welfare workers through unnecessary, duplicative reporting.

³² Please see [Justice for Children and Youth, Submissions on Bill 89 – Supporting Children, Youth and Families Act, dated April 4, 2017 at p. 8, 41-54.](#)

The Safe with Intervention Report highlighted substantial gaps in systems oversight and reporting, finding it “was difficult [...] to determine the specific degree and nature of service providers’ involvement in many of the histories. Case files and documentation were disjointed with gaps in information, unclear service trajectories, discrepancies between agencies, and inconsistent definitions”. Over the past five years, we have seen the impacts on individual children of failures to communicate and the inability to access essential case information for children in care, including risk of self-harm and former suicide attempts.

Recommendation: We urge the implementation of the recommendations of the Devon Freeman Inquest, including recommendations 29 to 32, to implement a “one care team per family” system to foster relationship building, knowledge development and open communication; acquiring and reviewing relevant information and documents related to the young person; and providing training to ensure that material information is clearly flagged in the file transfer process.

16. What changes to the CYFSA could improve how data (including identity based data and feedback from children, youth and families) is used and collected in order to monitor and address issues with services provided under the act? What factors are important to consider?

Data collection, reporting, and monitoring are necessary pre-conditions for evidence driven assessments of child, youth and family service providers and systems. Further to the key findings and observations of the Safe with Intervention Report, systemic trends in child welfare matters have “not historically been monitored at the provincial level to identify opportunities for improvement” including in the most urgent cases. As noted by the expert panel, “it is not possible to determine the overall cost to support young people in the child protection system because it is not recorded centrally”.

In accordance with the recommendations of the UN Committee on the Rights of the Child, we urge the Ministry to implement the recommendations 11 and 12 of the Concluding observations on the combined fifth and sixth periodic reports of Canada. This includes:

- Legislative and regulatory amendments to improve the collection of disaggregated data with reference to the methodological framework set out in the guidelines of the Office of

the UN High Commissioner for Human Rights' Human rights indicators: a guide to measurement and implementation;³³

- Legislative and regulatory amendments to enable the collection of province wide data with respect to child welfare services, including but not limited to systemic trends with respect to serious occurrence reports, verification information, investigation services, and transfers to ongoing services
- A comprehensive assessment and allocation of adequate budgetary resources to implement children's rights
- Implementing a tracking system for the allocation and use of resources for children throughout the budget, in addition to impact assessments on how investments may serve the best interests of children

Not understanding the outcomes, impact, experiences and costs at an aggregate level renders a meaningful assessment of the quality, efficacy and value of services over time impossible, ultimately imposing greater costs on the child welfare system and the government as a whole. For young people receiving services and for communities as a whole, the absence of standardized and transparent reporting, data collection and tracking renders meaningful accountability impossible.

C: Concluding Observations

We applaud the Government's continued commitment to review and redesign of the child welfare system to better serve children and youth and to address the persistent harms of that system. Transformational change is necessary to ensure equitable, rights-respecting, and child- and youth-centred services within the child welfare system and across social service sectors.

The inaugural five-year review provides a moment of opportunity to further rights-respecting child welfare services through consent based, informed services and holistic long term strategies guided by the child's voice and identified needs, not the needs of the adults. Actualizing the

³³ [Human rights indicators: a guide to measurement and implementation, HR/PUB/12/5.](#)

stated purpose of the Act and giving life to children’s rights requires clear articulation of the protection and legislative guarantees of youth in care, an ongoing commitment to truth and reconciliation, and clarified standardized best practices to shift the culture of care services.

We thank the Ministry for its consideration of these submissions and look forward to future opportunities to comment on legislative, regulatory, and policy proposals, and welcome a consultative and collaborative approach to making real change for Ontario’s children and young people.

JUSTICE FOR CHILDREN AND YOUTH