

# Report on the 2015 Review of the *Child and Family Services Act*

April 1, 2015

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April 9, 2015

I am very pleased to present the Report on the third legislative review of the *Child and Family Services Act*. This report summarizes what we heard from children, youth, families and service providers in Ontario about the ways the Act affects their lives - and how they thought the Act could be strengthened or improved to support both high-quality services and positive outcomes for children and youth.

I would like to extend my sincere thanks to the hundreds of individuals and organizations across Ontario that contributed their insights, experiences and expertise. In particular, I would like to express my appreciation to the young people and families who participated – your contributions were invaluable.

Many participants of the review noted a need to address a number of challenges that currently exist in the delivery of services, including those serving some of the most vulnerable young people in Ontario. Service providers, youth and families have also requested that the *Child and Family Services Act* be updated to better reflect the social changes that have taken place in the province over the past 30 years.

Throughout the review, we received the message loud and clear, that Ontarians want to see change in the legislation that governs many of the province's programs for children, youth and their families. For this reason, I am committed to hosting further targeted discussions on key areas of the legislation as we work toward possible updates to the Act.

We will continue to engage with partners, service providers, families and youth, as well as those with lived experiences, as we explore key areas for updating legislation. The perspective of our partners, communities, children and youth and their families is important to me, my ministry and the Act.

We have an ambitious year ahead of us and with the help of our partners I know that **together**, we can make a real difference in the lives of Ontario's children and youth.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tracy MacCharles', written in a cursive style.

Tracy MacCharles  
Minister

# Introduction

In September 2014, the third legislative review of the *Child and Family Services Act* (CFSA or the Act) was announced. A requirement of the CFSA is that the Minister must publicly review the Act, or specified provisions of it, every five years. These reviews are conducted by the Ministry of Children and Youth Services (MCYS) and are a way for the government to better understand how its laws, programs and policies are experienced on the ground. The information gathered as part of these reviews provides an opportunity for learning and change, and also supports the ministry and its partners to provide high-quality services for children, youth and families in Ontario.

The paramount purpose of the *Child and Family Services Act* is to promote the best interests, protection and wellbeing of children and youth. The CFSA governs many of the province's programs and services for children and youth, including:

- Child welfare
- Youth justice services
- Secure treatment
- Children's developmental services
- Residential services
- Community support services
- Indian and native child and family services<sup>1</sup>
- Adoption within Ontario.

The two sections of the CFSA that specifically apply to the review are:

- Section 224, which sets out the requirements for a mandatory review, and
- Section 226, which specifies that the mandatory review must include a review of provisions that impose obligations on children's aid societies (CASs) when providing services to a person who is an Indian or native person or in respect of children who are Indian or native persons, with a view to ensuring compliance by societies with those provisions.

The full text of the CFSA and its associated regulations can be found online at the Ontario government's e-laws website: [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

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<sup>1</sup> Please note that within the CFSA, "Indian" has the same meaning as in the *Indian Act* (Canada), while "native community" means a community designated by the Minister under section 209 of the CFSA. The term "Aboriginal people" generally refers to First Nations, Métis and Inuit peoples. However, most groups prefer to be referred to by their distinct name in recognition and respect of their distinct cultures, relationships, rights and histories.

The 2015 review of the CFSA focused on two areas: improving outcomes for children and youth, and modernizing and clarifying the language of the Act. Improving outcomes for children and youth specifically focused on:

- Supporting older youth who are in need of protection
- Residential services and licensing
- Information sharing
- Permanency (seeking to provide permanent homes for children in care), including adoption
- Supporting Aboriginal children and youth.

To allow as many people to participate and present their thoughts and views as possible, the process for the 2015 review was inclusive, with many avenues to provide feedback and make recommendations. Information on how to participate was posted on the MCYS website, and formal notification of the review was sent to over 1,000 organizations and agencies. Specific efforts were also made to include young people in the process, as one of the ministry's goals is that children and youth have meaningful opportunities to participate and have a voice in the decisions that affect them.

This report is a summary of what was heard from the diverse children, youth, families and service providers in Ontario about the ways the Act affects their lives – and the things about the Act that could be strengthened or improved.

### *Public Engagement*

Between October and December 2014, public engagement sessions were held in 11 locations across the province: Kingston, Timmins, Sudbury, Windsor, London, Hamilton, Thunder Bay, Scarborough, Brampton, Toronto and Ottawa. At each location, two sessions took place: an afternoon session was targeted to organizations, agencies, service providers and professionals; and an evening session was held for children, youth and their families. Approximately 400 people attended one or more of these sessions.

Facilitated by external facilitators, the public engagement sessions used small-group and/or roundtable discussion formats. To ensure that the voices of Francophone Ontarians were heard, the option to participate in French was presented at all sessions. There was significant participation by the francophone community in bilingual sessions held in Sudbury and Timmins, and a dedicated francophone session in Ottawa.

The ministry also met with a number of associations, advocates, and experts, including: Our Voice, Our Turn (a group of youth and alumni in and from care); the Ontario Association of Children's Aid Societies (OACAS); the Association of Native Child and Family Services Agencies of Ontario (ANCFSAO); the Office of the Provincial Advocate for Children and Youth; the Child and Family Services Review Board; judges and representatives from the Office of the Chief Justice for both the Superior Court of Justice and Ontario Court of Justice; the Office of the Children's Lawyer; the Children in Limbo Task Force; and the Premier's Council on Youth Opportunities. Youth had their own sessions and participated in others. Theirs were often the strongest voices at the table.

In the spirit of open government, the public engagement sessions used social media to increase participation, make information on the public sessions more accessible, and increase the geographic reach of the review. The live Twitter outreach for the engagement sessions was conducted in both English and French @CFSARReviewEN and @CFSARReviewFR.



**Written Submissions**

Individuals, groups and organizations were encouraged to send in written submissions. Two discussion guides were available to help frame the submissions – one general and one specifically for youth.

In total, 116 submissions from organizations, groups, individuals, children, youth and parents from all over Ontario were received in many different formats. The submissions represent a cross-section of the sectors and services that support children, youth and their families, including: health, legal, child welfare, youth justice, mental health, special needs, residential services, housing, adoption, and youth support services.

### *First Nations, Métis and Inuit Engagement*

The ministry values the unique contribution of our First Nations, Inuit, Métis and urban Aboriginal partners. An external facilitator led targeted engagements with these partners. Support was available so that partner organizations could attend, organize engagement sessions with their communities, and formally provide their recommendations and submissions to the review.

### *Francophone Engagement*

It is critical to hear the voices of Francophone Ontarians as part of any review process. Bilingual and/or French-specific sessions were held in Timmins, Sudbury and Ottawa.

### *Analysis and Report Writing*

All written submissions, as well as the summaries from public, targeted, and Aboriginal engagement sessions were catalogued and analyzed using qualitative methods to identify key themes for public reporting. The information included in this report is a summary of what was heard. Given the diversity of voices and variety of perspectives, the complexity of the topics under review, and the detailed responses received during the review process, it is important to acknowledge that this report is an overview of the main themes, rather than an exhaustive list of every issue raised over the course of the public engagement.

# Privacy and Personal Information

The privacy of individuals and their stories and experiences is of paramount importance. All information received at the public engagement sessions and through written submissions has been anonymized for internal use.

Materials or comments received from organizations may be used or disclosed by the ministry in accordance with applicable legislation to assist the ministry in formulating changes to the existing legislation, regulations and/or policy guidelines. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

Individuals who provided materials or comments and who indicated an affiliation with an organization were considered to have submitted those comments or materials on behalf of the organization so identified, unless the individuals indicated that the submission was being made on the individual's own behalf.

If you have any questions about the collection or use of this information, you can contact the Manager of the Planning and Partnerships Unit, Strategic Policy and Planning Division of the Ministry of Children and Youth Services at 416-326-1051.

## Disclaimer

*This document is a reflective summary of the diversity of perspectives heard over the course of the review of the Child and Family Services Act. The views expressed in this document are not endorsed and do not necessarily reflect those of the Ministry of Children and Youth Services or the Government of Ontario.*

*Please note that this was a review of legislation, associated regulations, and ways that the legislation is interpreted and made operational; it was not an evaluation of specific programs or organizations.*



# What Was Heard...

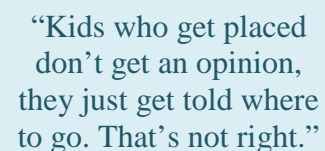
## Improving Outcomes for Children and Youth – Overarching Themes

The majority of participants in the review suggested that it is time for Ontario to consider substantial changes to the legislation that governs many of its programs and services for children, youth and their families. There was consistency in the call to amend the legislation to address existing challenges to the delivery of services to some of our most vulnerable young people, though there were varying opinions respecting specific proposed amendments. This report is a summary of what was heard from all participants in the review. Where there were differences in what we heard from youth, families, service providers and other partners, these are specifically noted or attributed.

Participants put forward a wide range of ideas on how the legislation could be amended, reshaped and/or reframed to better meet the needs of children and youth, and to further their rights and interests. Service providers, youth and their families want the legislation to reflect the social changes that have taken place in the province over the past 30 years, and see it as an opportunity to prepare Ontario for the future. Beyond the recommendations specific to the targeted areas of the review, there were a number of overarching themes that emerged that indicate a broader focus from participants on how the Act could help improve outcomes for children and youth.

### *Perspectives, Rights, and Voices of Children and Youth*

Children and youth see and experience the world very differently than do their parents, advocates, or service providers. Participants advocated for a CFSA that better reflects and incorporates the views of children and youth. Participants, including many youth, emphasized that the CFSA should be child- and youth-centred, grounded in rights and that it should use strengths-based language. Participants said that currently the Act is focused on the provider, and the language that is used creates barriers because it is hard to understand and the Act is difficult to navigate.



“Kids who get placed don’t get an opinion, they just get told where to go. That’s not right.”

It was suggested that a shift in perspective could be represented not only in modernized language and definitions, but also including reference to the *United Nations Convention on the Rights of the Child*.<sup>2</sup> This was proposed as a mechanism to more firmly establish the right of young people to have a voice in and influence over matters that affect them. Many participants suggested that the

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<sup>2</sup> United Nations General Assembly, Convention on the Rights of the Child (1989). United Nations, Treaty Series (U.N.T.S.) Vol. 1577. Retrieved from the United Nations Treaty Series website: <https://treaties.un.org/>

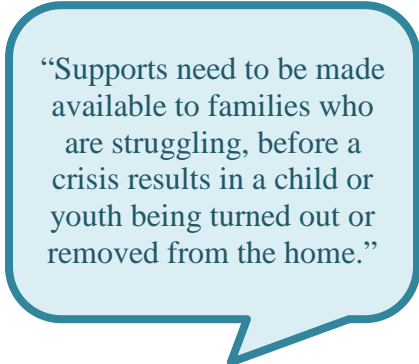
children and youth involved in the system of services governed by the CFSA are often treated as objects of protection and benevolence, rather than as full rights-holders with evolving capacities, and the right to participate in decision-making about their life-course.

Young people, in particular, emphasized that they do not feel empowered or have the opportunity to participate in decision-making about their lives when they are involved in children and youth services. It was suggested that there are many opportunities for the Act to specifically require supports and services to more “meaningfully” involve children and youth. For example, participants advocated for the CFSA to include consent-related provisions so that a child could have a say in decisions.

*Prevention and Support Focus*

Perspectives reflected a common belief that the CFSA should emphasize prevention and support, rather than resorting to more intensive intervention- or protection- based approaches. Many participants stated that the majority of supports for children, youth and families are available only after a situation has reached a crisis point, where a child is in need of protection (e.g., the child has suffered physical or emotional harm) or the justice system has become involved. Participants proposed that supporting children, youth and families earlier would be more cost- effective and would result in better outcomes for children and youth across the life-course.

Some participants suggested that the CFSA should require that CASs report on the use of prevention-based supports prior to intervention, in cases where protection is deemed necessary. Another idea was that courts should be provided with clear options to direct children, youth and families to prevention-based services.



“Supports need to be made available to families who are struggling, before a crisis results in a child or youth being turned out or removed from the home.”

*Access to Services and Supports*

Many participants emphasized the importance of equitable access to high-quality, culturally appropriate and community-based services. Participants suggested that access to services and supports was paramount and that the Act could be amended to ensure that no child or youth is left in need or in “limbo,” without access to services and supports. Some participants also stated that no parent should find themselves in the situation of calling upon protection services as their only means of accessing needed support services.

Participants raised the idea that every child and youth in care should have a clearly documented legal guardian for the purposes of authorizing consent to health care as one way to improve access to services, improve quality of communication around care, reduce risk and promote safety.

## *Diversity (e.g., Ethnic, Racial, Linguistic, Religious, Cultural or Gender Identities) and Vulnerable Groups*

Many participants in the review noted that the CFSA does not reflect the diversity of Ontario, and that this causes barriers for children and youth to remain connected to their racial, ethnic, religious or linguistic identities. Participants frequently referred to Ontario's *Human Rights Code*<sup>3</sup> and expressed a desire to see the CFSA incorporate the United Nations' *Convention on the Rights of the Child*, which states that "a child belonging to an ethnic, religious or linguistic minority or who is indigenous shall not be denied the right, in a community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

Participants also suggested that certain child and youth populations require specific attention and additional support due to historical or social issues<sup>4</sup> and that their experiences should be better reflected in the CFSA. For example, concerns were raised that some ethno-cultural communities are disproportionately represented in the child welfare system, in particular Aboriginal and African-Canadian children and youth. Additionally, participants stated that some of Ontario's most vulnerable children and youth face multiple and complex challenges and this may compound their risk of experiencing exclusion or marginalization. Participants proposed that children and youth with multiple and complex needs might require additional recognition of these needs to ensure that targeted services and supports are in place for them to succeed.

Participants in the review specifically provided the advice that areas of the Act that refer to a child's religious faith should be updated to reflect Ontario's many religious faiths. Many mentioned that Section 86 of the CFSA, which states that "a Protestant child shall not be committed under this Part to the care of a Roman Catholic society," was in particular need of modernization.

## *Transitions and Continuity of Care*

Many participants suggested that there is a need for the CFSA to more directly address the issue of transitions (e.g., transitions from child and youth to adult service systems, transitions across child and youth service systems, and transitions from systems of care to adulthood/independent living).

Several participants noted that when children and youth are in care or in secure custody, there are many service transitions that can disrupt education pathways and learning plans. Participants indicated it can take considerable time to be placed in school, and often children and youth will

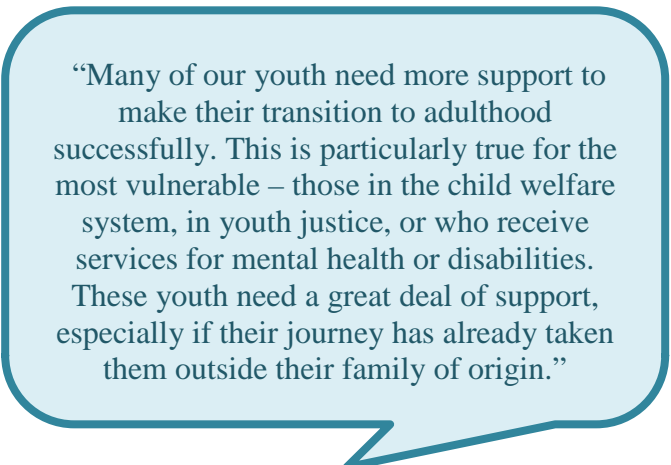
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<sup>3</sup> Human Rights Code, Revised Statutes of Ontario (1990, H.19). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>4</sup> Some specific populations that may require specific attention are referenced in *Stepping Up – A Strategic Framework to Help Ontario's Youth Succeed*. These include: First Nations, Métis, Inuit and urban Aboriginal children and youth; francophone children and youth; young people living in poverty; those in or leaving the care of children's aid societies; those living in rural and remote communities; those with special needs; lesbian, gay, bisexual, transgendered, transsexual, two-spirited and queer (LGBTQ) young people; newcomer children and youth; racialized children and youth; and youth in conflict with the law.

spend time out of school as a result of changes or disruptions to their placement. Similarly, it was suggested that there could be legislative requirements to ensure that children and youth do not experience delays or disruptions when they transition out of and back into schools.

Participants proposed that legislation and eligibility criteria should be consistent across government with respect to age requirements, and that service providers should be required to collaborate in transition planning (e.g., at entry into school or from youth to adult services) to improve outcomes for children, youth and their families. Similarly, participants advocated for improvements to transition supports for children and youth with special needs, families experiencing challenges or gaps in services, and youth transitioning to adult services.



“Many of our youth need more support to make their transition to adulthood successfully. This is particularly true for the most vulnerable – those in the child welfare system, in youth justice, or who receive services for mental health or disabilities. These youth need a great deal of support, especially if their journey has already taken them outside their family of origin.”

For many participants in the review, improving transitions and continuity of care was rooted in improving connections to family, to community, and to culture. This was seen to be especially important for First Nations, Métis and Inuit children. The establishment of lifelong relationships with caring and supportive adults and peers was noted as essential to assist children and youth to transition into adulthood.

### ***Increasing Accountability and Transparency***

Participants suggested that the CFSA could be clarified with respect to accountability and transparency. Participants advocated for clearer and more transparent performance expectations for those services governed by the CFSA. This included the idea of legislated public reporting by government and service agencies on quality, safety, compliance, and other performance measures.

Participants proposed that the CFSA could provide for a range of interventions to hold a children’s aid society accountable if it is not meeting performance expectations. One suggestion was to amend the CFSA to include provisions similar to those found in the *Education Act*,<sup>5</sup> including the appointment of an investigator.

There were also calls for increased third party oversight in order to handle complaints and hold entities and individuals accountable for their actions in child, youth and family services. The calls for more oversight also included ideas for strengthening the powers of existing entities and improving the review process under the Residential Placement Advisory Committee (RPAC) and the Child and Family Services Review Board (CFSRB).

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<sup>5</sup> Education Act, Revised Statutes of Ontario (1990, E.2). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

Finally, participants also advised that accountability could be improved through changes to better align the CFSA with existing legislation, including:

- The Freedom of Information and Protection of Privacy Act (FIPPA)<sup>6</sup>
- The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)<sup>7</sup>
- The Personal Health Information Protection Act (PHIPA).<sup>8</sup>

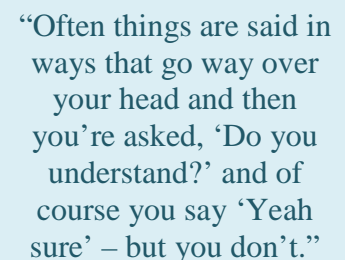
## Modernizing and Clarifying the Language of the Act

Since its proclamation in 1985, the *Child and Family Services Act* has been periodically revised and updated. However, participants expressed that the need for modernization goes beyond just language and definitions, and is actually crucial in order for the CFSA to meet the needs and interests of children and youth.

Participants stated that the CFSA should be changed to better reflect the realities of the modern world and to underpin a system of services that are responsive, understandable, accessible and easy to navigate.

To accomplish this, many participants called for the CFSA to be better aligned with other statutes that have been more recently amended, including but not limited to:

- The *Education Act*
- *Toby's Act*<sup>9</sup>
- The Ontario Human Rights Code
- The *Poverty Reduction Act*<sup>10</sup>
- The *Personal Health Information Protection Act*.



“Often things are said in ways that go way over your head and then you’re asked, ‘Do you understand?’ and of course you say ‘Yeah sure’ – but you don’t.”

Participants also called for stronger alignment to international treaties and declarations, including:

- The United Nations Convention on the Rights of the Child

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<sup>6</sup> Freedom of Information and Protection of Privacy Act, Revised Statutes of Ontario (1990, F.31). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>7</sup> Municipal Freedom of Information and Protection of Privacy Act, Revised Statutes of Ontario (1990, M.56). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>8</sup> Personal Health Information Protection Act, Statutes of Ontario (2004, c.11). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>9</sup> Toby's Act (An Act to amend the Human Rights Code with respect to gender identity and gender expression), Revised Statutes of Ontario (2012, c.7). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>10</sup> Poverty Reduction Act (An Act respecting a long-term strategy to reduce poverty in Ontario), Revised Statutes of Ontario (2009, c.10). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

- The United Nations Declaration on the Rights of Indigenous Peoples.<sup>11</sup>

Participants indicated that changes could be made to the structure of the CFSA so that it would be more easily understood by parents and youth. Examples included expanding provisions respecting the Rights of Children and making this one of the first Parts in the Act, or consolidating critical complaint and review processes into one Part instead of having these intermittently placed throughout the Act.

### *Update Definitions and Language*

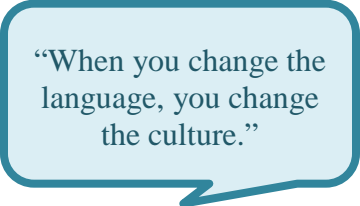
Participants advocated for the removal of language from the CFSA that they viewed as archaic, confusing or stigmatizing. They stated that the language in the legislation should be amended to be more common, current, respectful, strengths-based, and child- and youth-focused.

Many young people involved in systems of care indicated that from their earliest years they have experienced discrimination or stigmatization, and they identified terms that should be changed such as:

- “disability”
- “runaway”
- “Indian”
- “native”
- “society wardship”
- “committed”
- “apprehended”
- “custody”
- “a case”
- “a file”
- “ward.”

Participants also called for more strengths-based and child- and youth-focused language in the Act to recognize the agency of children and youth. This included shifting away from terms that could create an association between these children and youth as offenders, victims or the property of others, rather than as individuals full of potential for achievement and success. Participants suggested that the best way to update the language in the Act would be to work directly with children and youth, especially children who are or have been in care.

There was an expressed desire to remove language that does not reflect the realities of contemporary families and the wide variety of family structures that exist in Ontario. Participants suggested that the existing language does not reflect same-sex parent families, single parent families, and other non-nuclear family configurations, such as families with step-parents or more than two parents who are co-parenting. Participants proposed that references to a “natural father” or “both parents” should be replaced with language such as “all parents.”



“When you change the language, you change the culture.”

There were also calls to change the definitions and terminology in the CFSA to make them more inclusive of, and specific to, Francophone Ontarians and First Nations, Métis and Inuit people. Métis and Inuit participants, in particular, expressed concern that the current definitions restrict

<sup>11</sup> United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples (2007), A/RES/61/295. Retrieved from the General Assembly of the United Nations website: <http://www.un.org/ga>



access to culturally-appropriate services for their children and youth. Participants also suggested that there needs to be greater clarity around a number of vague terms such as “suitable,” “qualified” and “residency.” For example, participants suggested that “residency” be defined for the purposes of adoption and intercountry adoption.

Participants also called for a plain language version of the Act, available in multiple languages or formats, and specifically including indigenous languages.

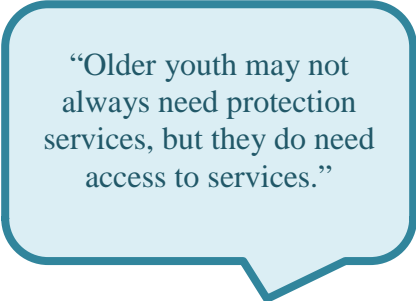
## Supporting Older Youth Who are in Need of Protection

The following reflects the issues raised with respect to supporting older youth who are or may be in need of protection. Many submissions referred to and supported the recommendations made in the Final Report of the Youth Leaving Care Working Group entitled *Blueprint for Fundamental Change to Ontario’s Child Welfare System*.<sup>12</sup>

### *Raising the Age of Protection*

There was broad agreement that it is “essential” and “urgent” that the age of protection be raised from age 16 to age 18.<sup>13</sup> This sentiment was expressed in all public engagement sessions and the majority of written submissions – it was raised and supported by youth, service providers and parents. One of the written submissions even included a petition signed by more than 10,000 individuals who supported raising the age of protection to 18.

Many participants noted that raising the age of protection from age 16 to 18 would make the CFSA consistent with other provincial and federal laws (e.g., the *Election Act*,<sup>14</sup> the *Education Act*, the *Age of Majority and Accountability Act*,<sup>15</sup> and the *Children’s Law Reform Act*,<sup>16</sup> all of which recognize 18 as the age of majority and the age that a child becomes an adult). In addition, participants suggested that changing the age of



“Older youth may not always need protection services, but they do need access to services.”

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<sup>12</sup> *Blueprint for Fundamental Change to Ontario’s Child Welfare System, Final Report of the Youth Leaving Care Working Group* (2013). Retrieved from the Ministry of Children and Youth Services website: <http://www.children.gov.on.ca/htdocs/English/documents/topics/childrensaidth/youthleavingcare.pdf>

<sup>13</sup> The definition of “child” for all services under the CFSA, except child protection, is a person under the age of 18 years. For the purposes of child protection, the definition of “child” is limited to young people under the age of 16 years, or up to 18 years if the child is already in the care of a children’s aid society (CAS). Youth who are in need of protection for the first time at ages 16 or 17 are not eligible to receive services from a CAS.

<sup>14</sup> *Election Act*, Revised Statutes of Ontario (1990, E.6). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>15</sup> *Age of Majority and Accountability Act*, Revised Statutes of Ontario (1990, A.7). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

<sup>16</sup> *Children’s Law Reform Act*, Revised Statutes of Ontario (1990, c.12). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

protection would bring Ontario into alignment with some other Canadian provinces, where the age of protection either matches the age of majority (i.e., 18 or 19) or there are alternative legislated programs to support older youth in need of protection at ages 16 and 17.

### *Providing Voluntary, Flexible, and Transitional Support Services for Older Youth in Need of Protection*

Though youth and service providers equally supported raising the age of protection, they also noted that it should be done in a way that supports protection services to older youth on a voluntary basis, this being reflective of the needs of this age group.

Youth participants stated that they want more control over their own lives but often need financial, educational, emotional, social and life-skill supports to be able to transition to a healthy, stable adulthood. For example, it was proposed that older youth (e.g., 16–17 years old) in need of protection should be able to enter into special agreements or arrangements that include but are not limited to financial assistance, supported living arrangements, educational services, practical life skills and/or other support services. Another suggestion from participants was that the CFSA be amended to help improve access to wraparound services in areas including counselling, parenting, education, recreation (such as music or sports), intervention programs, transition supports, or drug treatment/rehabilitation programs

Participants also raised the idea that the CFSA could be amended to better support youth at age 18 as they transition to adulthood. For example, participants recommended that youth be permitted to remain in children’s residential care (e.g., foster or group care) if the young person turns 18 in the middle of a school year. This would allow youth to stay in a stable environment to finish the school semester/ complete graduation exams. Many participants proposed raising the age of eligibility for Continued Care and Support for Youth (previously known as Extended Care and Maintenance) to the age of 25. Another issue raised was how the legislation could better support the complex challenges faced by youth in need of protection who are also parents themselves. Finally, throughout the review, many participants suggested access to services should be based on developmental needs and that provisions in the CFSA should be less focused on chronological age.

## Residential Services and Licensing

The following reflects the issues raised with respect to residential services and licensing. Participants repeatedly noted that amending provincial legislation, standards and accountability mechanisms is critical to ensure that foster homes, group homes, youth justice facilities and respite services meet the needs of children and youth.



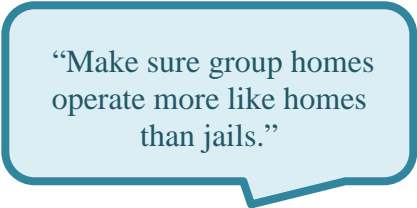
## *Improving Requirements, Standards, Consistency and Quality Control*

One of the key concerns identified by participants was a perceived lack of robust provincial standards and regulations to support the safety and wellbeing of children and youth receiving residential services. Participants suggested that the standards<sup>17</sup> that are in place are not being applied and adhered to consistently.

Participants provided examples of their experiences and suggested there is a wide variation in the quality and perceived safety of services provided in residential settings. Participants said there is a lack of specific standards and expectations for the different forms of residential services (e.g., foster homes, group homes, youth justice facilities and respite homes) – and that the differences between forms are not always clear, raising challenges to consistency and quality of care.

Participants called for greater consistency in the application of standards across all services, regardless of geography, through a more robust system of inspections and enforcement. A significant number of participants called for inspections of residential service settings to occur more frequently and for the CFSA (including regulations) to describe a clear process for unscheduled or unannounced visits.

Some participants thought that a system of accreditation or inspections by an independent party with specific qualifications could be established under the Act. The rationale provided was that licensing provides a legislated minimum, below which licensed facilities cannot operate; however, accreditation builds on this “legislated floor” and could look more closely at factors that determine the quality of the facility and outcomes of the services. Participants suggested that there needs to be a shift away from maintaining minimum standards and instead that there should be mechanisms in place for continuous quality improvement, to ensure that the standards set out by legislation are met.



“Make sure group homes operate more like homes than jails.”

Another challenge raised by participants was that current regulations and standards were overly reflective of expectations that were fundamentally “western,” “suburban,” “nuclear-family” and “middle-class,” instead of reflective of the diversity and needs of Ontario’s children, youth and families. For example, participants advocated that requirements for the physical space (number of bedrooms, etc.) in a residential setting were unreasonable for families living in the remote north or densely populated urban areas. Participants also suggested that residential service standards could better reflect culture and language needs, especially with respect to First Nations, Métis, and Inuit children and youth and other ethno-cultural communities.

Finally, unlicensed and/or illegally operated residential services were raised as problems by participants. It was suggested that the CFSA should address these issues, and that powers of inspection or other provisions, such as notification to placing agencies, could be put in place to address these concerns.

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<sup>17</sup> Participants used the term “standards” to broadly refer to requirements set out through a combination of legislation, regulation, policies, and terms and conditions.

## *Human Resources and Training*

In general, participants recommended that additional requirements for human resources (e.g., additional staffing ratios) and staff training across a variety of areas could be added to the CFSA and its associated regulations with respect to residential licensing.

Participants in the review suggested that the requirements related to qualifications of staff in residences, group homes, youth justice facilities and respite services are inadequate and training is minimal. Participants raised concerns particularly regarding children and youth with special and complex needs, and advocated that more qualified and specifically trained staff are needed to provide services to vulnerable populations.

Participants also mentioned the importance of outlining minimum requirements for training and basic competencies for working with diverse populations and/or specific populations, and that these requirements should be in line with the Ontario Human Rights Code.<sup>18</sup> Participants suggested that increased requirements around key staff competencies and training would better support an environment free of discrimination for children and youth in residential settings. Francophone participants also stressed that access to French language services was essential for their children and youth to remain connected to the francophone culture and community.

## *Requirements and Oversight of Outside Paid Resources/Operators*

Participants noted that the societal and business environment in which the residential system operates has changed dramatically since the CFSA was introduced. Participants suggested that residential services that take place through privately owned Outside Paid Resources/Operators (OPRs) were an emerging concern. Specifically, participants proposed that OPRs should be subject to significantly more rigorous oversight, inspection, assessment and/or review.

Advice received included that the CFSA could better outline responsibilities and accountabilities of OPRs. For example, participants suggested that legislation and/or ministry policy could be clarified so that OPRs are required to participate in quality control mechanisms that are equivalent to the *PRIDE*<sup>19</sup> training process and *SAFE* home assessment or undertake minimum competency training. Other participants suggested that these entities could be required to fully comply with provisions of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*.<sup>20</sup>

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<sup>18</sup> Some specific populations that may require specific attention are referenced in *Stepping Up – A Strategic Framework to Help Ontario's Youth Succeed*. These include: First Nations, Métis, Inuit and urban Aboriginal children and youth; francophone children and youth; young people living in poverty; those in or leaving the care of children's aid societies; those living in rural and remote communities; those with special needs; lesbian, gay, bisexual, transgendered, transsexual, two-spirited and queer (LGBTQ) young people; newcomer children and youth; racialized children and youth; and youth in conflict with the law.

<sup>19</sup> Ontario requires that all prospective adoptive families complete a parental training (*PRIDE* – Parent Resources for Information, Development and Education) and homestudy process (*SAFE* – Structured Analysis Family Evaluation).

<sup>20</sup> *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, Statutes of Ontario (2008, c.14). Retrieved from the Ontario e-laws website: <http://www.e-laws.gov.on.ca>

Service providers also specifically proposed that a more consistent approach across the province could be established for rate setting (i.e., the same and consistent factors for rates and rate changes), including provisions in the CFSA that establish a framework for rate setting tied to evaluation and performance measures.

### *Supporting Parents and Temporary Services*

Participants suggested that the residential services system could be improved by better matching appropriately skilled foster parents with the needs of the individual foster child. Participants stated that the skill sets required to foster infants and young children may be very different from those required to successfully foster older youth or youth with mental health, behavioural and addictions issues and/or complex medical needs.

Participants stressed that in emergencies, families should be able to access emergency residential care without wait lists and without giving up custody of their child or youth. It was proposed that this could apply to both temporary and long-term residential care, especially for parents of children with complex special needs, such as those with autism and/or Fetal Alcohol Spectrum Disorder (FASD). For example, participants suggested that a parent or foster parent of an autistic child might need a place of respite or a drop-in centre.

## Information Sharing

Significant changes have taken place in terms of information communication technologies and information management practices since the CFSA was proclaimed in force. For example, the personal computer was just being introduced as a basic component of modern society when the CFSA was drafted in the 1980s. The following section reflects the issues and ideas raised by participants with respect to information sharing.

Participants advocated that a systematic approach to modernizing the legislation as it relates to information management<sup>21</sup> requires immediate attention. However, it was also stated that this requires a careful approach and sensitive, system-wide solutions that balance issues of ownership, privacy and collaboration.

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<sup>21</sup>Information management by definition is the collection and management of information from one or more sources and the distribution of that information to one or more users or audiences. This often involves those who have a stake in, or a right to that information. Issues related to information management may include, but are not limited to: accuracy, security, handling of records, collection, use, disclosure, consent, accountability, retention, privacy, safeguards, individual access, openness (open government and open data), identification of individuals, purpose of use, limitations on collection/use/disclosure, audits, procedures, policies, incident management, emergency, and change management.

## *A Legislative Framework*

With respect to information sharing, participants in the review consistently expressed a need for a legislative framework for information management within and across services for children, youth and their families.<sup>22</sup> Participants proposed that in order to protect, support and improve outcomes for children, youth and families, a legislative framework is required under which the “rules” for information management and sharing are updated and clarified. Participants also conveyed that in the absence of a legislative framework, service providers (including children’s aid societies) are relying on organization-level policies that lead to inconsistent approaches across the province. Many participants expressed that this fragmented system could hamper effective decision-making if there is a lack of predictable and high-quality information for use by service providers, community partners, the legal system, and other key players in the lives of children, youth and families.

Participants pointed to recommendations and reports from recent inquests, the Information and Privacy Commissioner of Ontario and the Provincial Advocate for Children and Youth as indicative of the need for a legislative framework for information management for children and youth services. Similarly, participants advocated for improving alignment of the CFSA with other statutes that have information sharing provisions, including:

- The Freedom of Information and Protection of Privacy Act (FIPPA)
- The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)
- The Personal Health Information Protection Act (PHIPA)
- The Youth Criminal Justice Act (YCJA).<sup>23</sup>

## *Protected and Respected Privacy*

In both the public engagement sessions and in written submissions, participants repeatedly raised the importance of privacy protections and the relationship to public trust in child, youth and family services.

All participants stressed the importance of personal privacy and called for information sharing provisions that strike a careful balance between protecting the privacy of the individual and the family, and promoting the best interests of the child. There were calls for the Act to require that personal information be collected, stored, used and disclosed ethically. It was also suggested that the legislation should ensure that only relevant and necessary information be collected, stored, used and disclosed.

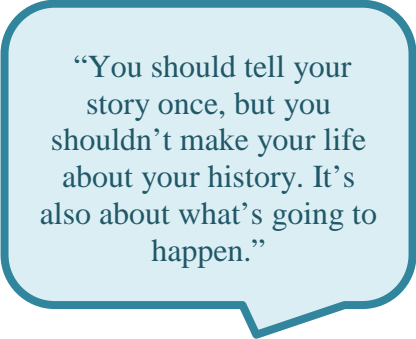
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<sup>22</sup> Part VIII of the *Child and Family Services Act* was never proclaimed and was repealed.

<sup>23</sup> Youth Criminal Justice Act, Statutes of Canada (2002, c.1). Retrieved from the Department of Justice Canada website: <http://laws-lois.justice.gc.ca/eng/acts/y-1.5/>

## *Seamless Support and Collaboration*

Many children, youth and families expressed frustration at having to repeatedly “tell their story” to get the services they need. It was emphasized that agencies, organizations and government should work within an information sharing framework that reduces the need for families to have to tell the same stories (possibly painful) and answer the same questions (possibly intrusive) when they are trying to access needed services. However, youth also reported being wary of how their stories might be captured in their files. They wanted only limited or specific information shared with new providers so that they would have the opportunity to present their lives and needs according to their current reality.



“You should tell your story once, but you shouldn’t make your life about your history. It’s also about what’s going to happen.”

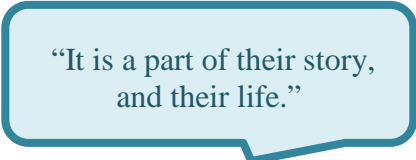
Youth, families and service providers reported that they experience a gap in how information is shared between service providers that regularly interact with children and youth, in areas such as education, health, mental health, child protection, municipal and community services. It was suggested that the CFSA should allow for a broader spectrum of consent-based information sharing that would allow key information to accompany a child or youth from sector to sector.

To accomplish this, participants raised the idea of adopting a “circle of care” model for information sharing for children and youth receiving services under the CFSA. It was suggested that this could allow specific relevant information about a child or youth to be shared among relevant parties who are involved in the provision of developmental services and care, including parents.

Participants expressed the desire to have a logical set of legislation, protocols and consents in place to support seamless access to services and information sharing across providers. Service providers also proposed that there should be a non-retaliation and immunity clause for persons acting in good faith similar to that in the *Personal Health Information Protection Act* (PHIPA).

## *Participation, Ownership and Access*

Children, youth and parents articulated their desire for participation in decisions about, ownership of, and access to, their personal and service information. A child and youth-centred approach was proposed for information sharing that would see children and youth consulted, according to their capacities, about the information that could be shared with whom and for what purposes. Young people said that it is important for them to be able to control the story of their lives, and noted a concern that without their involvement, information had the potential to be used against them and not in their best interests. Further to the concept of ownership and youth controlling their own narrative, participants suggested that young people should be able to make a correction to information in their file and be encouraged to do so. Children, youth and families also called for a clear mechanism to review decisions related to information management and for the correction of information.



“It is a part of their story, and their life.”

## Data Collection and Reporting

Many participants recommended that the Act should require the government to monitor, collect and publicly report specific data on how the services governed by the CFSA are performing, particularly with respect to disadvantaged groups, such as those identified in the *Poverty Reduction Act* and *Stepping Up: A Strategic Framework to Help Ontario's Youth Succeed*<sup>24</sup>.<sup>25</sup> It was also recommended throughout the review that the Act include requirements for children's aid societies to publicly release annual reports on an established set of service and quality indicators.

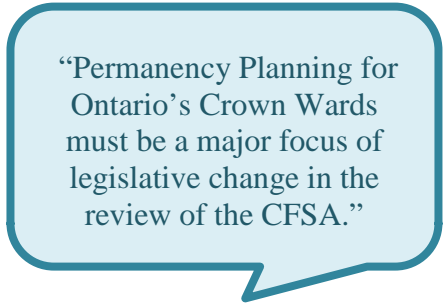
Finally, some participants recommended that the CFSA be changed to enable the use of a unique client identifier to support improved case management, information sharing and outcomes-based data collection. This would also support government and partners to continuously improve services and account for the impact of specific interventions on outcomes.

## Permanency (including Adoption)

The following summarizes the issues raised by participants with respect to permanency, including adoption. Overall, participants reiterated the importance of keeping families together. Participants articulated a need for enhancements to the CFSA respecting prevention services and permanency planning, and the importance of maintaining a focus on the best interests of children and youth.

### Permanency Planning and Plan of Care

Participants noted that in order to limit the number of times children and youth in the child welfare system are relocated to different homes, a permanency plan and “plan of care” should be established as early as possible. They also suggested that child or youth participation in permanency planning is not consistent throughout the province, and that it is essential for youth to be involved in creating their plans of care and understanding the timelines within that plan. In their comments, participants stated that the CFSA should be amended to support better permanency planning and development of plans of care.



“Permanency Planning for Ontario’s Crown Wards must be a major focus of legislative change in the review of the CFSA.”

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<sup>24</sup> Ministry of Children and Youth Services (2013). “Stepping Up: A Strategic Framework to Help Ontario’s Youth Succeed.” <http://www.ontario.ca/steppingup>

<sup>25</sup> Some specific populations that may require specific attention are referenced in *Stepping Up*. These include: First Nations, Métis, Inuit and urban Aboriginal children and youth; francophone children and youth; young people living in poverty; those in or leaving the care of children’s aid societies; those living in rural and remote communities; those with special needs; lesbian, gay, bisexual, transgendered, transsexual, two-spirited and queer (LGBTQ) young people; newcomer children and youth; racialized children and youth; and youth in conflict with the law.

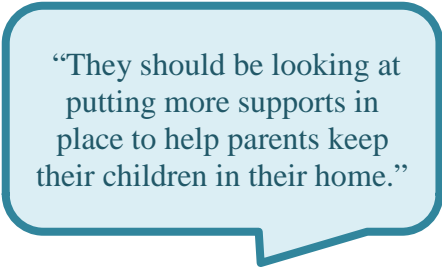


A number of participants said that there should be a single prescribed format for plans of care so that the information is consistent across all agencies and placements for children in care. For example, participants recommended that the CFSA could outline more detailed aspects of the plan, including: efforts to keep a child in his or her geographic, ethno-cultural and linguistic community; efforts to keep a child or youth with his or her family; efforts to keep a child involved in lifelong relationships with caring adults; efforts to involve the child in the process whenever possible; developmental milestones; supports delivered; and/or options considered for permanency.

Participants also voiced concerns about inter-jurisdictional issues related to permanency planning, specifically that legislation should support placement with kin in another province. This was seen to be especially important for Aboriginal children and youth, who may have community ties out of province, and a placement there could help to maintain ties with their culture and community.

### *Supporting Parents*

Many comments received from participants suggested that more could be done to provide parents with specific supports based on their needs. Working with and supporting parents and families earlier and more intensively, through therapy, community supports or other resources, was seen as key to resolving the root causes of problems and avoiding having to remove a child from a home. However, if apprehension is necessary, participants stressed the importance of increasing the supports available to affected parents to reduce the time before a child or youth may return home or find a new permanent home.



“They should be looking at putting more supports in place to help parents keep their children in their home.”

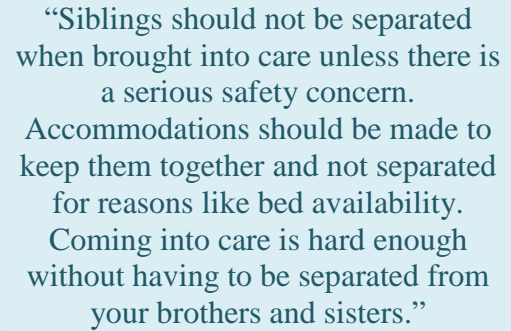
Another idea raised by many participants was requiring foster and adoptive parents to access training and supports as ways to reduce the stress on the parents as well as the children and youth when a care arrangement starts. This included cultural and identity competency training or training in how to deal with difficult situations. Another recommendation for supporting foster and adoptive parents was to provide them with a more complete picture of the child’s or youth’s mental health, health or physical needs.

### *Openness Orders, Access Orders and Openness Agreements*

Issues were raised by a number of participants related to the determination of access and openness orders for children and youth. For example, a suggested change was that openness and access orders should be determined from the perspective of the child or youth, in order that the determination of best interest is for the child or youth, rather than the parent. Participants stressed the importance of maintaining sibling relationships in all but extreme circumstances. For example, participants expressed that there should be a presumption that siblings will maintain or have contact with each other, as long as it is safe to do so.

Openness and access were also raised in relation to adoption. Specifically, participants recommended that adoptive parents be notified if the child they are adopting has a sibling in care, and/or if that sibling is also available for adoption.

Another issue participants mentioned was the barriers to contact with a Crown ward once he or she is adopted. Participants recommended a legislative change to the test for obtaining an access order to a Crown ward, as well as improved mechanisms for the reinstatement of access orders in the event of an adoption breakdown.



“Siblings should not be separated when brought into care unless there is a serious safety concern. Accommodations should be made to keep them together and not separated for reasons like bed availability. Coming into care is hard enough without having to be separated from your brothers and sisters.”

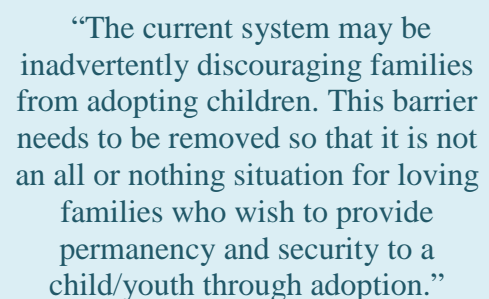
### *Timelines*

Participants shared a number of recommendations related to timelines and permanency. A substantial number suggested that more time is needed for families to apply for access and openness orders, particularly in remote communities, where residents may not have ready access to counsel/advice and legal aid.

Other issues raised regarding timelines included a desire for children’s aid societies to be held accountable for adhering to the timelines established in the CFSA. Specifically, participants said that court dates for children are hard to secure and hearings are often extended, resulting in delays in decision-making respecting children.<sup>26</sup> Some participants suggested that families should be given more time to prepare for court so that they may gather resources, especially those who may wish for Alternative or Original Dispute Resolution (ADR/ODR) or other interventions to occur before a court date.

### *Improving Adoption*

Participants raised many issues and recommendations regarding adoption. One of the themes was to ensure that Crown wards are more consistently placed for adoption in Ontario. Participants also articulated that more older youth should be placed for adoption – it was noted that just because children in care are 15 or 16 years of age, it should not preclude them from finding a permanent home.



“The current system may be inadvertently discouraging families from adopting children. This barrier needs to be removed so that it is not an all or nothing situation for loving families who wish to provide permanency and security to a child/youth through adoption.”

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<sup>26</sup> Note that the timelines are set out in the *Family Law Rules*.



Participants in the review noted that the CFSA could better reflect an expressed need by adoptive parents to receive detailed information about the child or youth they are adopting, including health and behavioural information. It was suggested that this information is important for a parent to know and could help to prevent adoption breakdowns. Furthermore, participants suggested that the CFSA should establish explicit and very limited legislative criteria for interfering with the final phases of an adoption, in the cases where that may be necessary.

Some participants proposed that Ontario could create two separate pieces of legislation, or organize the Act into two distinct parts – one respecting child protection (adoption of Crown wards) and another respecting voluntary or private adoptions where a licensee places a child for adoption and the parents consent to the adoption. Participants indicated that the CFSA currently combines two distinct legislative schemes that require cross-referencing and moving back and forth through the Act in order to determine applicable time lines and other legal procedures.

A number of participants also called for a Provincial Adoption Agency to be established under the CFSA to work parallel to children's aid societies to coordinate and improve adoption services across the province. The recommendation for a Provincial Adoption Agency in the report, *Raising Expectations: Recommendations of the Expert Panel on Infertility and Adoption*,<sup>27</sup> was often cited by participants.

### *Private and Intercountry Adoption*

Participants expressed a desire for the CFSA to be clearer with respect to intercountry and interprovincial adoptions that are finalized in Ontario under the CFSA. Participants indicated that although some intercountry and interprovincial adoptions must be finalized under the CFSA, the Act does not have provisions that reflect the unique complexities of these adoptions and instead, treats all adoptions under the CFSA as though they were domestic adoptions. Inconsistency and a lack of clarity were also raised with respect to the processes of intercountry or interprovincial adoptions by relatives, and the appropriate application of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.<sup>28</sup>

Participants also proposed that the CFSA could regulate birth parent counsellors in the way that it does for adoption agencies/agents and adoption practitioners. Participants noted that although birth parent counsellors have a fundamental role of counselling birth families throughout their adoption planning and decision-making process, they do so without any qualifications or regulation of the services that are provided.

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<sup>27</sup> Ministry of Children and Youth Services (2009). "Raising Expectations: Recommendations of the Expert Panel on Infertility and Adoption." <http://www.children.gov.on.ca/htdocs/English/infertility/index.aspx>

<sup>28</sup> The Hague Conference on Private International Law, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) (1993). Retrieved from the Hague Conference on Private International Law website: [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)

Further, participants raised the need for greater portability of assessments (e.g., the SAFE homestudy) among public, private, domestic and intercountry adoption streams. Some participants noted that currently assessments to support private domestic or intercountry adoptions are not necessarily accepted by CASs if the prospective adoptive parents later decide to pursue public adoption. On the other hand, assessments completed by a CAS are accepted to support private domestic and intercountry adoptions.

Participants also raised the idea that the issue of surrogacy could be addressed under the CFSA. At present, legislation does not specifically address adoption of children where families have contracted with surrogates in foreign countries and then wish to formally adopt these children in Ontario.

### *Kinship and Customary Care*

Aboriginal and non-Aboriginal participants alike were adamant regarding the importance of keeping children and youth within their communities and with family. Participants expressed interest in the concept of “customary care.” They wondered whether the definition or model could be used for other ethnic, religious or linguistic communities caring for children and youth according to their customs, where there are child protection concerns.

Aboriginal participants stressed the pivotal role that community plays in the upbringing of First Nations, Métis, Inuit and urban Aboriginal children and youth, and stated that the preferred options were customary or kinship care. Participants conveyed that the importance of keeping children in Aboriginal communities should be better reflected in current practices, in the CFSA and in its regulations. The issues of kinship and customary care are explored in greater detail in the next section.

## Supporting Aboriginal Children and Youth

The Aboriginal population in Ontario is diverse, with differences that result in a range of perspectives, approaches and needs for service supports. The term “Aboriginal people” generally refers to First Nations, Métis and Inuit peoples. However, most groups prefer to be referred to by their distinct name in recognition and respect of their distinct cultures, relationships, identities, rights and histories.

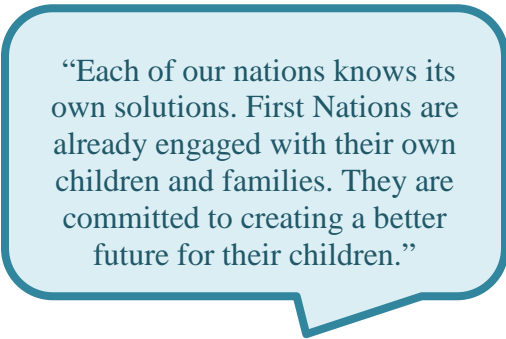
The purposes of the CFSA currently recognize that “Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.”

The following reflects the issues and ideas that were raised over the course of the review by participants, primarily Aboriginal participants, with respect to supporting Aboriginal children and youth.<sup>29</sup> The contributions of First Nations, Métis, Inuit and urban Aboriginal organizations and individuals to the present review of the CFSA were substantial. The degree of Aboriginal participation in this review reflects both the reality of continued Aboriginal overrepresentation in the child welfare system and a strong desire for change.

### *Aboriginal Provision of Child and Family Services*

There was consensus that increased Aboriginal control over the design, delivery and governance of child and youth services is key to improved outcomes for First Nations, Métis, Inuit and urban Aboriginal youth in Ontario. The mechanisms proposed as means to increasing Aboriginal control ranged widely. Although the majority of submissions suggested that greater control could be achieved through a broader interpretation of Part X (*Indian and Native Child and Family Services*) of the CFSA as it currently exists,

others stated that an entirely new and separate piece of legislation specific to indigenous children and youth is required.



“Each of our nations knows its own solutions. First Nations are already engaged with their own children and families. They are committed to creating a better future for their children.”

With respect to enabling greater control by First Nations, Métis, Inuit and urban Aboriginal partners, several submissions called for the CFSA “to acknowledge and support First Nations’ jurisdiction in unqualified terms,” and suggested statements related to Aboriginal or treaty rights of indigenous communities.

Others called more generally for the establishment of a legal framework that would allow for the implementation of First Nations laws; the development of objectives and priorities for providing services to Aboriginal children, youth and families; the establishment of culturally appropriate standards for services; the development of an Aboriginal specific funding model; the establishment of hiring criteria; and the licensing of residential care facilities.

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<sup>29</sup> The CFSA includes a number of provisions that specifically impose obligations on societies or agencies that provide services or exercise authority under the Act “with respect to Indian or native children.” The 2015 review of the CFSA incorporated Section 226 and Section 224 of the CFSA into one comprehensive process, and thus many of the issues raised by participants with respect to these provisions are also represented in this section on Supporting Aboriginal Children and Youth. A separate section follows that also outlines what was heard with respect to the provisions in Section 226.

### *Definition of First Nations, Métis and Inuit Communities*

Aboriginal and non-Aboriginal participants were virtually unanimous in calling for revisions to the terms “Indian,” “native person” and “native community” in the CFSA. While recognizing that many of the definitions used in the CFSA refer to corresponding legislation such as the *Indian Act*,<sup>30</sup> participants suggested that any expanded definition incorporate the definitions used under the *Indian Act* as well as the definition of “Aboriginal” used in Section 35 of the Constitution, with the qualifying phrase “including, but not limited to.” The need to retain flexibility within the definition for children and families to self-identify as indigenous was repeatedly emphasized.

Most parties suggested that expanded and inclusive definitions that explicitly allow for self-identification would permit more children to access culturally appropriate services (e.g., kinship and customary care). The definition of “Aboriginal child” used in *British Columbia’s Child, Family and Community Service Act* was repeatedly referenced as an example, under which:

*"aboriginal child" means a child*

- (a) who is registered under the Indian Act (Canada),*
- (b) who has a biological parent who is registered under the Indian Act (Canada),*
  - (b.1) who is a Nisga'a child,*
  - (b.2) who is a treaty first nation child,*
- (c) who is under 12 years of age and has a biological parent who*
  - (i) is of aboriginal ancestry, and*
  - (ii) considers himself or herself to be aboriginal, or*
- (d) who is 12 years of age or over, of aboriginal ancestry and considers himself or herself to be aboriginal;*

*"aboriginal community" means an aboriginal community designated by the minister.<sup>31</sup>*

Although some participants suggested the term “Aboriginal” be used, a majority supported the use of “First Nations, Métis and Inuit” as the more complete and inclusive terminology. Métis and Inuit participants, in particular, expressed concern that they are excluded from the current definition, and advocated that this restricts access to culturally appropriate services for their children and youth. It was also proposed that explicit recognition of Métis and Inuit people in the CFSA would have both practical and symbolic significance. Urban Aboriginal groups expressed similar thoughts with regard to “non-status Indian” children and youth in the province.

In addition, it was suggested that the use of the term “band” to refer to First Nations governments be replaced. For example, it was proposed that the CFSA could refer to “an organized Aboriginal community [that] includes bands as defined in the Indian Act (Canada)” and “Indigenous community” as “including, but not limited to, Métis communities, Inuit communities, and urban Aboriginal communities.”

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<sup>30</sup> Indian Act, Revised Statutes of Canada (1985, c. I-5). Retrieved from the Department of Justice Canada website: <http://laws-lois.justice.gc.ca/eng/acts/i-5/>

<sup>31</sup> Child, Family and Community Service Act, Revised Statutes of British Columbia (1996, c.46). Retrieved from the B.C. Laws website: <http://www.bclaws.ca>

### *Preservation and Promotion of Culture, Identity and Language*

Participant submissions recommended the introduction of language in the purposes section of the CFSA to further promote the preservation and promotion of culture, identity, language and heritage of Aboriginal children and that these should be a central consideration for all who exercise authority under the Act. Similarly, it was recommended that the CFSA include a provision requiring residential licensees to provide appropriate cultural programming and supports for First Nations, Métis and Inuit children and youth.

Many participants in engagement sessions, including youth with experience in child and family services, suggested that although some service providers claim to provide culturally appropriate programming, such programming often fails to meet the needs of Aboriginal children, youth and their families.


### *Child and Youth Connection to Community*

One of the main concerns expressed by Aboriginal youth participants was the need for a legislative framework that is supportive of community cohesiveness. The negative effect that removal of children and youth from their communities has on outcomes for Aboriginal children and youth was brought forward as a longstanding concern. Suggestions from youth were that the CFSA should focus more on prevention and on promoting activities for youth in remote First Nations communities. The Act should also provide reintegration supports (including housing) for youth raised outside of their communities who wish to return as young adults.

Aboriginal and non-Aboriginal service providers also emphasized the importance of kinship and customary care, and the need for community-youth connections to be maintained as a part of each plan of care. Proximity and the ability to maintain a connection to the community of origin should be taken into account in determining an appropriate placement for care, especially in the case of children in remote communities who are in need of protection.

### *Collaboration, Relationships and Protocol*

A theme raised by many participants was that the CFSA could be used to ensure collaboration among non-Aboriginal service providers, Aboriginal service providers and Aboriginal communities, with respect to improving outcomes for Aboriginal children and youth. Although there was some discussion of the need to share best practices and/or expertise among service providers, many participants cited the need for more frequent and productive communication between service providers and communities. In this regard, participants raised the need for required information sharing protocols between Aboriginal and non-Aboriginal agencies and organizations.



“Workers should have training in the community, be willing to spend at least four weeks getting to know the community, be open to the diversity of our community and open to training about who we are as a people.”

Aboriginal partners also suggested using the CFSA to address inter-jurisdictional issues for First Nations, Métis and Inuit children and youth, including the movement of children and youth between jurisdictions, reunification of families, and repatriation of children and youth to their nations and/or home communities. This was seen as critical given historical territories, historical removal of First Nations children from their communities, and modern-day cross-border and cross-continental movements of people.

### *Cultural Competency*

The need for greater collaboration between Aboriginal and non-Aboriginal service providers was emphasized by many participants, but prefaced by the need for increased cultural competency throughout the child and family service system. The issue of cultural competency was raised consistently not only by First Nations, Métis, Inuit and urban Aboriginal organizations, but also in the submissions of many non-Aboriginal service providers who recognize that they do not always have sufficient access to the skills and training necessary to provide culturally responsive services to Aboriginal children, youth and families.

Some specific legislative amendments were proposed that could support the development of a more culturally competent service sector. Recommendations included adding a requirement to the CFSA about comprehensive cultural competency training for ministry staff, children's aid societies, family court judges and caseworkers. It was suggested that such training would be best provided by First Nation, Métis, Inuit and urban Aboriginal service providers, who should be adequately resourced for the role. The recruitment, training and retention of competent First Nation, Métis and Inuit child and family service professionals were also seen as key to increasing the cultural competency of the sector as a whole.

### *Kinship and Customary Care*

With regard to the issue of permanency, including adoption, for First Nations, Métis and Inuit children, most participants cited a need for expanded and strengthened provisions about the application of kinship and customary care. Participants suggested that while there has been an increase in the number of First Nations children placed through such arrangements over the last decade, the same has not occurred for Métis, Inuit and urban Aboriginal children and youth.

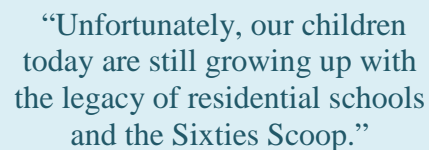
The most commonly suggested amendment was the inclusion of a provision or provisions requiring children's aid societies to demonstrate that every reasonable effort has been made to place an Aboriginal child into an Aboriginal home within their respective cultures and nations. For example, Métis children should be placed in the care of a Métis family and, likewise, Inuit children placed in the care of an Inuit family. Others suggested that Crown wardship for Aboriginal children should be ended completely, such that customary or kinship care would become the de facto practice for Aboriginal children in need of protection who cannot remain within their families.

Inuit and Métis organizations engaged in this review advocated for changes to Part X of the CFSA so that explicit reference could be made to the customary adoption and kinship care practices of their respective cultural groups. It was suggested that the association of “customary care” with First Nations is restricting access to such placements for both Inuit and Métis children.

### *Truth and Reconciliation in Child and Family Services*

Many Aboriginal-specific submissions emphasized that reconciliation must be conceived of as a process, one which requires continuing support for residential school survivors and their descendants as they continue their process of healing. Many of the submissions received as part of this review drew parallels between the residential school system and the removal of First Nations children from their communities in the 1960s and 1970s for

adoption (commonly known as “the Sixties Scoop”), and the current child welfare system as legislated by the *Child and Family Services Act*. Submissions to this review included calls for the Ontario government to use legislation to recognize what happened and to help survivors heal and reconnect to their identity.



“Unfortunately, our children today are still growing up with the legacy of residential schools and the Sixties Scoop.”

### *Provincial Advocate for Indigenous Children and Youth*

Many written submissions included positive statements about the Office of the Provincial Advocate for Children and Youth, and recommended that a similar role be established in the interest of First Nations, Métis, Inuit and urban Aboriginal children and youth in Ontario. It was thought that such a role could be filled through a position or positions within the existing Advocate’s office, or through the establishment of an independent office. Participants suggested that the person in this role could promote compliance with provisions of the CFSA pertaining to indigenous children and youth, as well as investigate complaints of children and youth themselves. Consideration would have to be given to the unique needs of Métis and Inuit communities to ensure they are properly represented within such an advocacy office.



# Provisions Imposing Obligations on Societies Providing Services to “Indian or native” Persons

The CFSA includes a number of provisions that impose obligations on societies which provide services or exercise authority under the Act “with respect to Indian or native children.” These provisions support one of the stated purposes of the CFSA itself, which is “to recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that respects their culture, heritage and traditions and the concept of the extended family.” It is a requirement of the Act that every public review specifically report on these provisions.

## *Aboriginal Provision of Child and Family Services*

There was consensus from all participants in the review that the full potential of the existing provisions in Part X of the CFSA has yet to be realized. This applies in particular to Section 211, which allows “a band or native community [to] designate a body as an Indian or native child and family service authority.” Although the number of Aboriginal child and family service organizations in Ontario has increased, participants expressed concerns that some areas of the province continue to lack a designated agency for the provision of Aboriginal-specific protection services. Many submissions recommended an expedited designation process for Aboriginal agencies, including additional resources. In general, efforts to support the development of capacity in new and existing Aboriginal service providers were encouraged by participants. Some participants recommended removing the words “wherever possible” from Section 1 (2) 5 of the Act, such that the entitlement of Aboriginal communities to provide their own child and family services was of paramount importance.

## *Provisions related to Relationships, Notifications and Consultation*

Compliance issues raised with regard to non-Aboriginal children’s aid societies providing services to indigenous children and youth focused primarily on Section 213 of the Act, which imposes obligations on societies to “regularly consult with their bands or native communities about the provision of the services or the exercise of the powers and about matters affecting [Indian and native] children.” Some participants suggested that a way to improve compliance with the provisions would be to include an expanded and clarified definition of “consultation.” Participants suggested that the CFSA could include a requirement for regular reports to First Nations and other indigenous communities concerning their children in care, at the individual, regional and provincial levels. This reporting was seen as a means to improve services and outcomes for Aboriginal children.

Submissions also spoke to the need for clear information sharing protocols, as many non-Aboriginal agencies agreed with the need for consultation in general, but reported feeling frustrated as it is unclear how consultation should occur. Recommendations for potential changes in this area included strengthening the language regarding the need for consultation and/or including specific



penalties for children's aid societies who fail to meet the requirements respecting consultation. First Nations people in particular advocated for improved notification and consultation for all services delivered to members of their communities, emphasizing that the provisions currently in the legislation are not sufficient.

### *Provisions Respecting Customary Care*

Another issue raised consistently and framed as an issue of compliance was the underutilization of customary care<sup>32</sup> arrangements as a placement option by non-Aboriginal children's aid societies. Participants suggested that if an Aboriginal child or youth must be placed outside of the community, societies should be required to work to ensure cultural and community ties are available for the child. This would ensure there is no loss of identity while the child is in care. Participants suggested that the best way to make sure this is carried out would be to require Aboriginal communities to have a specific role in helping to find placements for Aboriginal children and youth.

Many participants – both Aboriginal and non-Aboriginal – expressed that a clearer definition of customary care within the CFSA could provide children's aid societies with an improved ability to consider kinship and customary care as part of permanency planning. On the other hand, participants – both Aboriginal and mainstream – also suggested that it was crucial that Aboriginal communities have the flexibility to define and apply customary care. Many Aboriginal participants also suggested that “Formal Customary Care” carried too high an administrative burden, and suggested that instead it should be promoted as a permanent placement option that allows children to receive similar services as those in foster care.

## **Additional Areas of Note**

The following recommendations fell outside the scope of the review, but were consistently part of the discussions as essential considerations that impact the effectiveness of the CFSA and the programs it governs.

### *Reviews and Complaints*

Participants, including young people, raised concerns about how complaints and reviews are addressed in the CFSA, and suggested that there is a lack of process clarity, transparency and timely responses to complainants. A number of recommendations were made on how to improve existing complaint and review mechanisms. For example, it was suggested that the CFSA could outline a set of required components for complaints procedures, including for a timely response, for

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<sup>32</sup> Under Section 208 of the CFSA, customary care refers to “the care and supervision of a [First Nations] child by a person who is not the child's parent, according to the custom of the child's band or native community.”

all service providers governed by the Act.

Participants also recommended changes to improve processes under the Residential Placement Advisory Committee (RPAC) and the Child and Family Services Review Board (CFSRB). It was suggested that all children and youth, regardless of age, should be entitled to review processes by these entities. Many participants also thought that the powers of these entities could be improved to respond meaningfully to complaints, for example, through the power to make an enforceable order which remedies the issue raised in the complaint.

“Young people continue to raise concerns about the complaints system. These concerns include a lack of transparency and lack of a timely response to complainants.”

***Resources and Funding***

In addition to wanting to see more funding focused on prevention and supporting families, participants noted that a barrier to keeping families together, making smooth transitions between services and/or finding a “permanent” home can simply be a lack of resources. For example, it was repeatedly noted that the expense a family might incur if caring for a child or youth with special/complex needs could be the decisive factor in not pursuing adoption and instead remaining a foster family.

***Systemic Change to Address the Root Causes of Poverty***

Participants suggested that poverty and poor housing are two of the three top drivers of children and youth needing protective services – and stated that no child should be taken from their home due to poverty or poor housing.

Submissions to the review noted that Ontario’s *Poverty Reduction Act* recognizes the link between poverty and inadequate housing and the heightened risk of poverty among groups such as immigrants, women, single mothers, people with disabilities, Aboriginal Peoples and racialized groups. Many participants suggested that the CFSA could help address poverty by proactively requiring child protection agencies to undertake measures to redress poverty-related risks to children and their families, noting other jurisdictions have adopted such provisions in legislation. It was also recommended that the government review the CFSA, and/or any interpretive policies and guidelines, to make sure inadequate housing or poverty is not a stand-alone factor for considering whether the child’s wellbeing is at risk.

“If housing repairs, lack of a babysitter, or a child coming to school hungry are contributing to child welfare concerns, address those needs first to protect the child within the family.”

### *Further Engagement and Involvement in Legislative Change*

Participants stated that if there were to be changes to the CFSA, further consultation on those changes should be undertaken – and that this be done directly with children and youth who have experience with services, and with other experts. This step would help to ensure that revised legislation and regulations are appropriately grounded in the reality of first-hand experiences.

## Conclusion

This Report on the 2015 Review of the *Child and Family Services Act* is based on the thoughtful contributions of a broad range of participants. The advice received through written submissions and numerous discussion sessions represents a rich, and often varied, collection of perspectives on how we can deliver high-quality services to Ontario's children and youth.

Although the report refers to recommendations in general terms, many submissions for specific changes to the legislation were received during the course of the review. These specific recommendations will be explored in greater depth prior to any legislative changes scheduled in the future.

Given the diversity of voices and variety of perspectives, the complexity of the topics under review, and the detailed responses received during the review process, it is important to acknowledge that this report provides only an overview of the main themes, rather than an exhaustive examination of the contributions made by participants. The richness and detail of these contributions, however, represent an important resource that will continue to guide our work for the benefit of the children and youth of Ontario.

# Appendix A:

## The Ministry of Children and Youth Services

The CFSA is the legislation that governs many of the programs and services funded or provided by the Ministry of Children and Youth Services (MYCS). MCYS was created in 2003 to support the young people of Ontario to thrive and succeed. Our commitment is to protect, nurture and support children and youth as they grow – from birth, through childhood, adolescence and into adulthood.

The mandate of the ministry is twofold. The first is to work with, and through, our many partners to establish a system of services and supports that strengthen families and help Ontario’s most vulnerable children and youth overcome barriers to their success and wellbeing.

The second is to lead across government on issues that affect all children and youth. Since its creation, MCYS has developed considerable expertise in the area of child and youth development. This focus on positive development informs our role as a champion and catalyst for the outcomes of all children and youth in Ontario. The ministry actively shares that expertise and works in partnership to create opportunities for the voices of children and youth to be heard across government.

The ministry is accountable for the delivery and/or oversight of a range of programs and services. These include:

- Child and Youth Mental Health
- Child Protection Services
- Children and Youth with Special Needs, including Autism and FASD (Fetal Alcohol Spectrum Disorder)
- Healthy Child Development
- Ontario Child Benefit
- Youth Justice Services
- Youth Opportunities
- Adoption

The ministry’s strategic plan, *Growing. Together.*, communicates our continued commitment to Ontario’s children and youth. Copies of [Growing. Together.](#) can be accessed online.

