Provincial Advocate
for Children & Youth

Legislative Amendments and Recommendations regarding the *Child, Youth and Family Services Act, 2017*

Submission to the
Legislative Assembly of Ontario
Standing Committee on Justice Policy

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INTRODUCTION

Across many ministries of the Ontario government, there are countless reports, strategies and action plans guiding programs and services for children and youth and how to meet their needs. Yet when we speak with children and youth directly through our advocacy work they tell us about a gap they experience between the fine words written in legislation, regulation and policy and the reality of their daily lives; a gap that is often a chasm. The Office of the Provincial Advocate for Children and Youth (the Advocate's Office) listens to the voices of young people and partners with them to find ways to fill the gaps between promise and reality. We do this to bring legislators, policy-makers, service providers and the public together with children and youth to make meaningful change in the systems that provide them with care. It is in the spirit of partnering with young people the Provincial Advocate for Children and Youth is pleased to deliver this submission to the Legislative Committee reviewing Bill 89**.**

This submission contains: 1) background and context information regarding the work of the Advocate's Office; and 2) two "Schedules" that offer recommendations including language for proposed legislative amendments to Bill 89. Information contained in this document applies to the following issues in Bill 89:

- Part I - Implementing Katelynn's Principle
- Part II - Rights of the child to participate in decisions and to access administrative review
- Part III - Purposes of the Act
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BACKGROUND TO THE SUBMISSION

An independent commission of the Legislature of Ontario established in 2007, the Office of the Provincial Advocate for Children and Youth has a mandate to provide an independent voice for children and youth, including First Nations children and youth and children with special needs, by partnering

with them to bring issues forward. The Advocate's Office is also mandated to conduct investigations within its child welfare mandate and make recommendations to improve the lives of children and youth in Ontario.

Because of our mandate, we believe the Advocate's Office is uniquely placed to help give voice to the interests of young people in care who are central stakeholders in terms of experiencing the most impact of proposed changes to Ontario's child welfare legislation. We also believe that the most powerful voice for young people is their own. They possess the knowledge and wisdom of lived experience to help create meaningful change, but often lack the opportunity to be heard.

We continually seek opportunities to include youth in all aspects of our work and consult with young people to obtain their views concerning services that affect their lives. We better understand the systems that affect the young people in our mandate by listening to the thousands of youth who contact us each year seeking assistance, support from our community development work or the assistance we offer through our many advocacy projects. This submission is informed by all of the young people who have been connected to the work of the Advocate's Office.

The Advocate's Office is required to carry out its mandate in accordance with principles expressed in the United Nations Convention on the Rights of the Child (UNCRC), to which Canada is a signing party. Accordingly, we know how these principles can and must be interpreted to improve the lives of children and youth, in keeping with Canada's obligations under international law.

The Advocate's Office has made several submissions to the Ministry in the course of legislative review processes, including the recent 2014 review of the *Child and Family Services Act* (CFSA). The recommendations we made in that review process addressed the need for change regarding a range of issues in child welfare, issues which remain relevant today.

So much of what our Office understands about the need for change in the child welfare system in 2017 comes from partnering with children and youth. Our learning began in earnest when young people in and from care held their own hearings at the Ontario Legislature in search of better outcomes for other young people in care. The hearings, similar to those being held by the Standing Committee reviewing Bill 89, brought together over 700 people at Queens Park over a period of 2 days. The hearings opened up what had been previously been a closed conversation on child welfare reform and a closed system.

Out of this process a landmark report titled, *My Real Lifebook (2014)*[1], was produced by young people with support from the Advocate's Office followed later followed by, the *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group (January 2013)*[2]. Both documents contain recommendations for changing the child welfare system.

Young people in and from care who informed the Government's Expert Panel Report on Residential Care wrote, *Searching for Home: Reimagining Residential Care (2016)*[3], continue to inspire others in the way they have taken their mantra of "not stopping here" to heart and have stood strong and courageous by speaking to their experience at countless tables, work groups and committees.

In *My Real Lifebook* youth in and from care stated, "We want to be a part of our own lives". In *We Have Something to Say*[4] youth with disabilities wrote that they want to be subjects and not objects in the world, and that they want to be seen as being, "More than just their disability." First Nations young people whose voices are reflected in *Feathers of Hope*[5] were clear about the overwhelming feeling of hopelessness that is the consequence of feeling silenced. Children and youth living with mental health needs have spoken to us about the debilitating effect of not having a voice in, *Putting Youth in the Picture*[6]

When over 100 young Black youth came together to participate in the event, "HairStory: Black Youth Unite for the A.R.T.S", they spoke about their experiences of being in the care system, the root causes of the over-representation of Black youth in care and the lack of culturally anchored services to meet their needs.

When young people assisting the Office at the Katelynn Sampson's Inquest worked together with Office staff to create "Katelynn's Principle", they understood the importance of systems needing to work together with youth so they feel "seen" and "have a voice". When young people talk about participating

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[1] Advocate's Office, *My REAL Life Book: Report from the Youth Leaving Care Hearings* (May 2012), available at: http://provincialadvocate.on.ca/documents/en/YLC_REPORT_ENG.pdf

[2] Youth Leaving Care Working Group, *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group* (January 2013), p. 14-15, available at: http://www.children.gov.on.ca/htdocs/English/documents/childrensaid/youthleavingcare.pdf

[3] Advocate's Office, *Searching for Home: Reimagining Residential Care (2016)*, available at: https://provincialadvocate.on.ca/documents/en/ResidentialCareReport_En.pdf

[4] Advocate's Office, *We Have Something To Say* (2016), available at: https://www.provincialadvocate.on.ca/documents/en/We-Have-Something-To-Say-Report-EN.pdf

[5] Advocate's Office, *Feathers of Hope* (2016), accessible at http://digital.provincialadvocate.on.ca/i/259048-foh-report

[6] Advocate's Office, *Putting Youth in the Picture* (2016), available at: https://www.provincialadvocate.on.ca/documents/en/MH_report_EN.pdf

in decisions that affect their lives they acknowledge that this requires a positive and significant relationship with a listener. They have told us numerous times that it is difficult to find a supportive relationship in the Province's systems of care. As they wrote in, *My Real Lifebook*, "We feel alone and vulnerable". Bureaucrats and legislators are often confounded by what they hear from young people. "We can't legislate love," they say. While that may be true, what legislators and bureaucrats fail to understand is that they can create, through legislation, the conditions in which love and feeling a sense of connection and belonging can flourish. This is at the core of how the Advocate's Office views Katelynn's Principle.

The young people who have shared their hopes, dreams and lived experiences with all Ontarians through their forums, reports, submissions and contributions to planning, policy and program development are asking for a seat at the table, a seat that belongs to them as rights bearing citizens of the province. They truly have brought our government - and now our Legislature - to a point where historic change to the system is possible. But does the *Child Youth and Family Service Act* represent historic change? Our Office submits that it does not; at least not yet.

For many years our Office has argued for an open public discussion about how we protect children and support families in Ontario. The call for this discussion began in 2007 when the Office, in its first Annual Report, highlighted the fact that 90 children connected to the child welfare system in one way or another had died in the previous year. This was a fact about which few people in the province were aware. Reactions from the child welfare system to our disclosure of this information were filled with fury; but our Office remained steadfast. We continue to believe that a piece of legislation like Bill 89 must rest on a vision of what families and children need and should expect from their government. We ask the Province to say two things to children and youth: "We will protect you" and "You will have what you need when you need it in order to reach your full potential". We also ask the Province to say to their families – biological, adoptive, foster, kinship, or socially constructed – "Thank you, we have your back and whatever you need to do right by your children, you will have".

We believe that together, through commitment and dialogue, we can create a vision for better child welfare care in Ontario. We have yet to make this commitment to our children and their families or have the conversation that would help us build the vision together. Without this conversation and a working partnership with young people, amending the CFSA will amount to little more than tinkering with

systems and services instead of being about transforming the system so that it will genuinely improve the lives of children and their families.

THE KATELYNN SAMPSON INQUEST – THE NEED FOR SYSTEM WIDE CHANGE

The life and death of Katelynn Sampson plays a significant role in shaping how our Office sees the need for urgent and substantive change to the child welfare system. Katelynn was just seven years old and living with her legal guardians when she died in a small Toronto apartment in August 2008. She passed away unseen and unheard. Investigators found her blood in every room of her home. An autopsy revealed that she had 70 different wounds, broken ribs, a ruptured liver, and had died of septic shock. According to a *Toronto Star* report, investigators found a piece of paper on which she had written, 62 times, "I am an awful girl that's why no one wants me." Her legal guardians—friends of her mother's—eventually pleaded guilty to murder.

The Advocate's Office called for an inquest the moment Katelynn's death became known, since it was obvious from the way in which she died that numerous points of protection in the system had failed her. The hope, as always, is that Ontario's child welfare system will learn something from Katelynn's death and prevent similar tragedies from occurring again. In November 2015, seven years later, the Coroner's Office launched a discretionary inquest into Katelynn's death with about 30 witnesses testifying.

The Advocate's Office was granted standing at the inquest as a public interest party — a role we have served at previous inquests. The inquest revealed there were numerous examples of how a broken system contributed to Katelynn's death. For example:

- An Ontario Court of Justice had approved the transfer of custody from Katelynn's biological mother to a friend without requiring a criminal background check or children's aid society records, even though two children's aid societies had been involved with Katelynn's caregivers. At the time, legislation did not require these records to be provided. Katelynn had attended at least one of these custody transfer proceedings, but no thought was given to hearing from her directly.
- There were six referrals made to the children's aid societies overseeing Katelynn's file that were either missed or resolved without anyone seeing her in person.

- The couple who assumed custody of Katelynn had previous convictions related to drugs, prostitution and violence.
- Staff at Katelynn's school had noticed bruises on her body and that she had missed 73 full days and 16 half days of school from January to June in the year in which she died. However, school staff did nothing to intervene or question why she had missed so much school.

During the inquest, our Office moved quickly to emphasize the need for a child-centered approach to providing care, and suggested that the jury recommend establishing "Katelynn's Principle" to ensure children are seen as individuals with rights who must be seen, whose voices must be heard and whose opinions and views must be considered before any decision affecting them is made. This principle would place the child at the centre of any activity, policy or legislation, with an emphasis on their right to participate in decisions that affect their lives. Importantly, this would round out "Jordan's Principle", a child-first principle aimed at addressing disputes across levels of provincial and federal government jurisdiction when it comes to paying for services to First Nations children.

Parties with standing at Katelynn Sampson's inquest made more than 200 recommendations to strengthen child protection in Ontario. Ultimately, the jury put forward 173 of them. The jury's verdict and recommendations were released to the public[7] and included our recommendation to establish Katelynn's Principle.

DISCUSSION OF KEY RECOMMENDATIONS OF THE ADVOCATE'S OFFICE

Following is a discussion of key recommendations from the Advocate's Office for proposed legislative change to Bill 89. Key recommendations are the ones we feel will have the most significant impact on the system. This section provides a rationale for the selected recommendations and a deeper exploration of the centrality of Katelynn's Principle to the transformation of the child welfare system. A complete list of all 52 key recommendations is contained in Schedule "A".

[7] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016) available at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf

PART I – IMPLEMENTING KATELYNN'S PRINCIPLE

The first jury recommendation of the Katelynn Sampson Inquest was for all parties to implement "Katelynn's Principle". The parties to the Inquest, after spending 39 days in hearings on the matter, unanimously supported the creation and implementation of Katelynn's Principle as defined below:

- The child must be at the centre, where they are the subject of or receiving services through the child welfare, justice and education systems.
- A child is an individual with rights:
    - who must always be seen
    - whose voice must be heard
    - who must be listened to and respected
- A child's cultural heritage must be taken into consideration and respected, particularly in blended families.
- Actions must be taken to ensure the child who is capable of forming his or her own views is able to express those views freely and safely about matters affecting them.
- A child's view must be given due weight in accordance with the age and maturity of the child.
- A child should be at the forefront of all service-related decision-making.
- According to their age or level of maturity, each child should be given the opportunity to participate directly or through a support person or representative before any decisions affecting them are made.
- According to their age or level of maturity, each child should be engaged through an honest and respectful dialogue about how/why decisions were or will be made.
- Everyone who provides services to children or services that affect children are child advocates. Advocacy may potentially be a child's lifeline. It must occur from the point of first contact and on a continual basis thereafter.

The Advocate's Office believes that if the social workers, educators and other service providers involved with Katelynn had asked her about her experience living with Ms. Irving, the tragedy may have been prevented. Listening to the child and putting the child's experience at the centre of all services provided can be, and was for Katelynn, a matter of life and death.

The Advocate's Office firmly supports Katelynn's Principle and is committed to ensuring it is embedded in the purposes and principles underlying the Act.[8] Advancing the best interests of the child is the paramount purpose of the Act. But before deciding what is in a child's best interest, every decision-maker must solicit, hear and consider the voice of the child (**Recommendation 1**). The role of a decision-maker should not be to decide on their own what is best for the child; they have a duty to consult the child before deciding what is best in light of the child's own views and wishes.

Although Part II of Bill 89 will establish new rights for children, the Advocate's Office believes that these rights fall short of what Katelynn's Principle requires. Acting in accordance with the best interests of the child – the paramount purpose of the Act – cannot be accomplished without ensuring that the child's voice is heard. The problem is children and young people are not given the right to participate in *all* court and administrative proceedings that affect them.

A child or young person should have the opportunity to participate in all decisions affecting them to ensure that their wishes are taken into account (**Recommendation 2**). This is true both for children and for persons over 18 years of age who are provided services under the Act (**Recommendation 3**).

This amendment is consistent with Ontario's obligations under Article 12 of the UN Convention on the Rights of the Child and in line with recommendations of the UN Committee on the Rights of the Child (the Committee) in its concluding observations on Canada's report issued in 2012 (the Committee Report).[9] The manner and extent of that participation will depend on the nature of the decision that is at issue and the circumstances and capacity of the child; appropriate participation may be limited to an informal conversation or it may involve the child testifying in court.

> *As a child, being taken from home, and moved from family to family, I was never able to find home again. I was looked at differently by society, had words pushed into my mouth by workers, and as a child I [was] never seen or had a say for my best interest.*
>
> - Ashley, 20, Youth in Care, from, *My Real Life Book, p.12*

[8] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016), Recommendation 1, available at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf

[9] Office of the United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child*, *Committee on the Rights of the Child – Sixty first session*, (October 2012). Paragraphs 34 to 37, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf.

A Need to Broaden the Jury's Definition of Katelynn's Principle

We wish to stress in this discussion section that the Advocate's Office believes strongly that it is not enough to simply ask a child or young person if they approve of a decision that has already been made given that they might not understand it, particularly if the child is young, vulnerable or has limited cognitive ability. We would add that the child or young person must be provided with access to all information available pertaining to the decision, and in an understandable form, to help them fully comprehend what needs to be decided and to provide fully informed consent. The decision-maker may need to accommodate the child or young person's unique circumstances or capacity to properly participate in the decision-making. In some cases, it will be necessary to give the child or young person access to legal counsel (**Recommendation 5**).

Children and youth must be given every support necessary to participate in their own lives. We must ensure young people have access to age appropriate resources at all stages of development to help them develop the awareness it takes to understand what is happening to them. We believe strongly that the inquest jury's definition of Katelynn's Principle in the Act needs to be strengthened by including an obligation on the part of caregivers, service providers and government to place children at the centre of decision-making affecting their lives. It is this specific amendment to the Act that will create fundamental change and shift the culture of our service systems to one that is more child-centred.

NB: From this discussion section onward in the submission, when we refer to Katelynn's Principle, we are using the term with this broadened conceptualization.

PART II - RIGHTS OF THE CHILD TO PARTICIPATE IN DECISIONS AND TO ACCESS ADMINISTRATIVE REVIEW

In addition to enshrining our expanded definition of Katelynn's Principle as an underlying principle in the Act, the Advocate's Office recommends that children and youth of all ages be provided with materials written in simple language that will help them understand the decision to be made and all implications/effects of the decision on their lives. We also believe that young people should be granted rights to access the administrative review processes set out in the Act, specifically:

- Where children raise concerns about services they are receiving, a service provider should provide a meaningful response to those concerns (**Recommendation 6**).

- Children should have a meaningful degree of involvement in decisions made about them (**Recommendation 7**).

- The service provider complaint process should be strengthened to ensure that children are advised of their rights to review decisions and seek the assistance of the Advocate's Office (**Recommendation 9**).

- While a child or young person now has a right against reprisals, Bill 89 should afford a specific mechanism for them to report reprisals and ensure that those responsible are held accountable (**Recommendation 10**).

- That Bill be amended to provide for a review of a placement by RPAC where a child of any age objects to the placement and resides within the advisory committee's jurisdiction **(Recommendation 34).**

Most importantly, Bill 89 continues to draw a line that excludes children under the age of 12 from decision-making and exercising rights, including the right to seek an administrative review by the Child and Family Services Board (the Board) and the right to participate in child protection hearings.

> *"You tend to get to a point where you just don't have any say. They'll come to you, and you'll simply say 'Well, it looks like everything's already been decided, hasn't it?"*
>
> — Young Person in Care, from, *Reality Check: Findings from the Second Annual Listening Tour of the Provincial Advocate*[10], p.44

We believe that all children and youth should be given the right to meaningful participation in decision-making, regardless of their age. Each child or young person should be presumed capable of participating in decision-making that affects their lives unless it can be demonstrated otherwise. We accordingly recommend extending notice and participation rights to children under 12 years of age in child protection proceedings or any other judicial or administrative matters that affect their interests (**Recommendation 8**).

Finally, given their evolving capacity, children or youth may require the support or assistance of an advocate to meaningfully participate in decision-making affecting their lives. However, many young people do not know about the Advocate's Office and the services we provide thus leaving them unable to

[10] Advocate's Office, *Reality Check: Findings from the Second Annual Listening Tour of the Provincial Advocate* (2016), available at: http://provincialadvocate.on.ca/documents/en/Listening-Tour-Report.PDF

obtain this support and assistance. In addition to informing children about the Advocate's Office, service providers should be required to tell children that they have the right to contact the Advocate's Office privately, without fear of reprisal or delay and should make available information about the Office readily available (**Recommendation 11**).[11]

PART III - PURPOSES OF THE ACT

The Advocate's Office also recommends amendments to bring the purposes of the Act in line with Canada's international commitments.

In 1991, Canada ratified the *UN Convention on the Rights of the Child* (UNCRC) and made a commitment to bring its legislation in line with the UNCRC's principles. As Ontario has previously recognized, the Act is an important means of putting these principles into practice. We recommend that the provisions of Bill 89 be enacted to recognize that services under the Act must be provided in accordance with the Convention (**Recommendation 12**).[12]

Ontario is also bound by and committed to the rights enshrined in the *Charter of Rights and Freedoms* (the Charter), which include protections against discrimination and the right to life, liberty, and security of the person. However, many services under the Act are provided through service providers, not directly by the Ministry. The Advocate's Office recommends that the Act clearly recognize that services must be provided in accordance with the *Charter* and the *Human Rights Code*, regardless of the entity through which they are provided (**Recommendation 13**).

Canada's commitments under the Convention, the Charter, and the *Human Rights Code* establish the legal minimum of what must be provided, not the goal to be reached. The references to that legislation in the preamble to the Act pays lip service to those obligations, but falls short of affirming them as purposes of the Act as recommended above.

Moreover, service providers should reach higher and do better than simply to meet what is legally required. The Advocate's Office accordingly recommends that service providers be mandated to be exemplars for meaningful and empowered participation of children and youth (**Recommendation 14**),

[11] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016), Recommendation 60, available at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf
[12] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016), Recommendations 2, 9 and 74, accessible at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf

and for the principles of anti-racism, anti-discrimination and the promotion of equitable outcomes (**Recommendation 15**).

If the above recommendations are not adopted, the Act should at least mandate that services be provided in accordance with the principles articulated in the preamble (**Recommendation 16**). Otherwise, the aspirations articulated in Bill 89 will remain merely words on a page.

Embedding Principles of Anti-Racism

African Canadian and Aboriginal (First Nations, Inuit and Métis) children and youth are over-represented in our Province's systems of care. The evidence of systemic racism is clear. In stating the need to address racism in the preamble/purpose of the Act we recommend a statement of acknowledgement of the impact of colonialism and anti-Black racism which exists in Ontario.

Further as with Katelynn's Principle we feel that a commitment to anti-racism must be embedded more fully and explicitly in the Act. The Advocate's Office recommends ensuring the work of Anti-Oppression Coordinators who currently serve in seven Children's Aid Societies be enshrined through a specific commitment to anti-oppression work in every Children's Aid Societies. If systemic racism is to change we must understand the extent of the problem and then face it head on.

Although "creed" is stated in the purposes of the Act and is a prohibited ground for discrimination under the *Human Rights Code*, it may mean different things to different people. Given the increasing diversity of Ontario's population, we recommend that a definition of creed be included in the Act for purposes of clarity.

PART IV - LEGISLATIVE AND POLICY-MAKING PROCESSES

The jury for the Katelynn Sampson Inquest recommended that Katelynn's Principle apply not just to individual decisions made under the Act, but also to "all services, policies, [and] legislation" that affect children and youth.

To put this recommendation into practice, the Advocate's Office recommends that the Province adopt a "child-first" policy so that all proposed legislation and policy is reviewed for its impact on children and youth (**Recommendation 17**).[13] Putting children and youth at the forefront of all legislation and policy

[13] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016), Recommendation 3, available at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf

that affects them is critical to embedding Katelynn's Principle into the systems through which services are provided to children and youth.

In particular, we recommend that the periodic legislative review process established under Part XII (Miscellaneous) of the Act be amended to include mandatory consultation with children and youth, so that their voices are heard (**Recommendation 18**). The same process must also apply to the Ministry's policy-making process.

The Advocate's Office is concerned about the absence of information about the Minister's process for carrying out the review of the provisions of the Act dealing with Aboriginal children that is currently required under section 226 of the Act. We accordingly recommend that the Minister be required to issue a report detailing the process and results of that review (**Recommendation 19).**

Finally, as the main recipients of services are children and youth, it is particularly important that all reports written by the Ministry or the Minister have a plain language version produced and made accessible to Ontario's young people (**Recommendation 20**).

PART V – COLLECTION OF DATA

By now the Province is well aware of the life outcomes for children in care: lower high school graduation rates as compared to their peers; over-representation in Ontario's mental health and youth justice systems; and high levels of homelessness. If we are to improve life outcomes for children in care we must set expectations and goals for them and measure our ability to deliver on our promises to them.

To maintain a clear focus on the challenges children and youth in care face, the Advocate's Office recommends that the Ministry be required to publish an annual report that tracks the experiences, challenges, and successes of children and youth in care (**Recommendation 21**).

Although the Minister may now collect personal information under Part X (Personal Information) to deliver and analyze the services provided to children, the Act should specifically instruct the Minister to go a step further to enact by regulation certain target outcomes and goals for children and youth, and then collect data for the purpose of ensuring that those target outcomes and goals are being achieved. This Annual Report must be made public.

We recommend that the Ministry enact regulations that provide specifically for the collection of data to help obtain a clear picture of the broader life circumstances of children and youth in care

(**Recommendation 22**). This data must be disaggregated to measure the gaps in outcomes that we know are experienced by groups that are over-represented in care, including Aboriginal and African Canadian children and youth. Such measures were specifically recommended in the Committee Report[14] and would extend the Ministry's commitment to an evidence-based strategy framework[15] to children and youth in care.

PART VI - PRIVACY AND PROTECTING PERSONAL INFORMATION

The circumstances, experiences, or services received by a child or young person that is at risk or in care is among the most personal information that can be collected. Some of the information and case records collected by service providers are compiled into a "Life Book" for children and youth that chronicles the important events that make up their childhood. Personal information collected about children and youth can be deeply personal or painful, but at the same time be an important part of their identity. Access to the information contained in this Life Book should be granted only by consent. A Life Book should contain no personal information that might reasonably be expected to upset a young person or require specific training to properly explain or understand.

> *When the past 20 years of my life I've been fighting for stability. All I want is to be like any other child. Do you know how it feels to have your life typed and filed?*
>
> - Kayla, 21, Former Youth in Care, from *My Real Life Book, p.12*

The Advocate's Office urges that comprehensive privacy protections be enacted to address young people's right to privacy, the right to be informed and consulted about decisions relating to the disclosure and use of personal information, the right to access and correct personal information, and the right to appeal decisions made in respect of the gathering or use of personal information (**Recommendation 23**).

The Advocate's Office believes that the intent of Part X (Personal Information) provisions is to provide the type of comprehensive protections that children and youth need. We propose that certain technical amendments be made to ensure that this intent is carried out in the Act and that personal information is not used or disclosed except where specifically permitted in the Act (**Part VI**).

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[14] Office of the United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child, Committee on the Rights of the Child – Sixty first session*, (October 2012). Paragraphs 20-21, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf.

[15] See, e.g., the Ministry's *2015 Stepping Up Annual Report* (using collected data to annually track outcomes for children and youth across Ontario), available at: http://www.children.gov.on.ca/htdocs/English/documents/youthopportunities/steppingup/Steppingup-2015AnnualReport.pdf.

We further recommend that procedural safeguards be strengthened regarding the use and disclosure of personal information, including:

- requiring notice to be given if personal information is used or disclosed without a person's consent (**Recommendation 23**);
- ensuring that an individual's consent to the collection, use or disclosure is properly obtained, including re-obtaining consent if there has been an important change in circumstances (**Recommendation 27**);
- requiring substitute decision-makers who make decisions on behalf of a child or young person to consult appropriately with the child or young person and consider their best interests (**Recommendation 28**); and
- ensuring that the institution granting access to records provides an explanation of the nature and purpose of using those records, including any potentially harmful effects of disclosing information contained in the records (**Recommendation 29**).

PART VII - EXPANDING PROTECTIONS FOR CHILDREN IN CARE

The Advocate's Office recommends a number of measures to expand the protections for children and youth in care, especially those who are most vulnerable.

We recommend that calls for protection be extended to young people over the age of 16, *but only where the young person gives their express written consent*. Although Part V (Child Protection) of the Act now applies to young people over 16, there is no such consent required when placing a child under protection. As a result, a 17 year old could be placed in the care of a society against their wishes or be apprehended without a warrant by a child protection worker if that worker decides that there is a substantial risk to the young person's health.

The Advocate's Office's recommendation – that protection orders be made available for young people over 16 – is intended to ensure that vulnerable young people are able to access the protection and support that they need, but only when the young person determines that it is necessary. Based on our years of experience working with young people who are most vulnerable or at risk, the Advocate's Office believes that coercing young people into protection against their wishes will do more harm than good. There is no reason to believe that young people now face a greater risk than before, risks that would justify these new, coercive measures.

It is imperative that young people over 16 be subject to child protection measures only with their written consent (**Recommendation 30**). The only exception should be where a child lacks the capacity to make decisions about their personal care. This determination should be subject to the same type of safeguards that apply to findings of incapacity to give consent to treatment.

Protecting vulnerable children requires expanding their rights to receive a fuller range of service to meet their developmental needs, including the right to form positive relationships and to be free from discrimination (**Recommendation 31**). The Act must also explicitly recognize the right of children and youth to grow up and engage with their culture and in accordance with their own chosen identity. As well, children and youth in care must have critical issues resolved while in care so that they can succeed as adults, including obtaining government-issued identification and the resolution of any outstanding issues regarding their legal status in Canada.

> *I did not have a say if I wanted to attend my cultural things as in pow-wows or sweat lodges. Instead, I went to church.*
>
> - Name withheld, 17, Youth in Care, from *My Real Life Book, p.22*

The Advocate's Office also proposes a number of other measures to strengthen the rights of children in care:

- Young people in care tell us that they often have difficulty exercising their right to communicate with their extended family in private or to communicate electronically with a reasonable degree of privacy. We accordingly recommend that the rights of children and youth in care be strengthened to ensure that they can do so (**Recommendation 32**).

- Young people receiving services that are subject to an inspection should be given the opportunity to meet privately with the inspector to raise any concerns that they may have (**Recommendation 33**).

- The role of residential placement advisory committees should be strengthened and their review should require consulting with the child and visiting the residential placement under review (**Recommendation 34**).

Instead of forcing young people into care, the Advocate's Office recommends that additional measures be taken to ensure that young people receive the support that they need to remain outside the system:

- We recommend that young people over 16 be entitled to access social supports, including financial support, Ontario Works and other social assistance programs (**Recommendations 36 and 37**).

- We recommend that a young person be entitled to receive extended care until they reach a maximum age of 25 years (**Recommendation 32**), in accordance with the recommendations of the Final Report of the Youth Leaving Care Working Group.[16] This support should focus on transition planning for the young person, including counselling, legal advice and connections to service providers. Benefits should include medical and dental coverage, and coverage for prescription medication. Extended care should include a provision for grants to cover emergency housing costs.

PART VIII – USE OF SOLITARY CONFINEMENT, SEIZURES, AND OTHER INSTRUSIVE MEASURES

Under Part VIII of the Act, a service provider is granted the extraordinary power to lock a child or young person in a specially designated room to isolate them from others. This practice is legally referred to as "secure isolation" under the *CFSA* but is more commonly known as "solitary confinement".

In 2015, the Advocate's Office carried out a systemic review of the use of solitary confinement on children and youth in youth justice facilities.[17] In these facilities, a young person over the age of 16 can be placed in solitary confinement for up to 72 hours at a time. This practice goes against international calls to ban the use of solitary confinement on young people for periods of time longer than 24 hours and peer-reviewed medical research that found the practice to be harmful to young people.

> *I feel like going crazy in a way; you get no communication, staff don't talk to you or nothing; you feel like you are in a mental institution… I know that people started to talk to themselves.*
>
> - Name withheld, describing the experience of solitary confinement, from, *It's a Matter of Time, p.43*

The report from the Advocate's Office following the systemic review found that the practice of placing young people in solitary confinement for longer than 24 hours was widespread. In dozens of cases, youth justice facilities went beyond the 72 hour legal limit when using solitary confinement. In 2013, one young person was placed in solitary confinement for 16 days, over five times the legal limit. Furthermore, the limit of 72 hours is not a firm limit as it can be extended by the Provincial Director.

[16] Youth Leaving Care Working Group, *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group* (January 2013), p. 14-15, available at: http://www.children.gov.on.ca/htdocs/English/documents/childrensaid/youthleavingcare.pdf

[17] Advocate's Office, *It's a Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities* (2005), available at: https://provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf

In a previous submission to the Ministry, we made a number of recommendations about strictly curtailing the use of solitary confinement on young people. However, these recommendations were not applied to Bill 89. Instead, language in the Bill does little more than replace the euphemism "secure isolation" with one that is even less plausible: "secure de-escalation".

Real restrictions on the use of solitary confinement for young people need to be made rather than simply changing the vocabulary that describes the practice. Use of the practice must be limited to truly extraordinary circumstances. The Advocate's Office recommends that the Act be amended to prohibit the use of solitary confinement for more than 24 hours in accordance with the ban advocated by United Nations bodies, including the Special Rapporteur on Torture (**Recommendation 39**). A young person placed in secure isolation for a period of 24 hours or more (or in a manner that is otherwise inappropriate) should have the right to apply to the Custody Review Board to be released from secure isolation and, in appropriate cases, be granted relief designed to ensure compliance with the Act (**Recommendations 40 and 41**).

Service providers must be required to include a summary of their use of secure isolation in the mandatory reports that they currently file with the Ministry (**Recommendation 42**). The Ministry must be continuously informed about how often secure isolation is used and under what circumstances. This information must be used to determine if service providers are complying with the legislated standards and be made available to the public.

Young people have different needs than adults and require different responses due to their age and stage of development. Feeling a sense of connection and belonging is important in child development hence focus and practice should be placed on relationship-building in youth justice facilities and explicit endorsement of the Relationship Custody Model should be stated in the preamble to the Youth Justice section of the Act.

Finally, there are a number of other recommendations that are needed to restrict seizures of contraband or other intrusive measures to the narrow circumstances in which they are appropriate for children:

- Innocent possessions that are ordinarily permitted, such as juice boxes, should not be subject to seizure as "contraband" based on quantity alone (**Recommendation 43**).

- The establishment of professional advisory boards should be mandatory, in order to review the use of intrusive measures (**Recommendation 44**).

- Review teams, which currently review intrusive measures but have been removed from the Act, should be reinstated (**Recommendation 45**).

PART IX - OTHER RECOMMENDATIONS

Finally, in this discussion section, we offer commentary on additional key recommendations we believe will improve the functioning of the Act and enhance the well-being of children and youth in care.

We recommend that the Act be amended so that the Minister has an express responsibility and mandate to ensure that measures are taken to ensure children and youth in care are not separated from their families due to a lack of resources or other needed support (**Recommendation 46**). Also, it should be the responsibility of the Minister to ensure that funding and other needed support provided to Aboriginal children and youth is comparable in quality and accessibility relative to the level provided to other children and youth, and that the services are culturally appropriate and adequate to meet their needs.

In this regard, we recognize in the Bill an intention on the part of the Province to remove the potential liability of the Ministry for any act or omission of a children's aid society. The Advocate's Office believes strongly that this is unacceptable (**Recommendation 47**). The Province has the ultimate responsibility to protect vulnerable children, whether the Minister chooses to do so directly or by assigning tasks to children's aid societies. However, as a matter of principle, and in common parlance, the buck must stop with the government of Ontario.

Finally, the Advocate's Office makes the following additional recommendations:

- Broaden the definition of "extended family" under the Act (**Recommendation 47**).

- Implement remedies for non-professionals who breach the duty to report potential harm to a child or young person (**Recommendation 49**).[18]

- Require the Minister to publish any compliance orders (**Recommendation 50**) and the terms and conditions applicable to residential licenses (**Recommendation 51**).

- Require service providers to provide a reasonable and timely response to any report delivered pursuant to a statutory mandate (**Recommendation 52**).

[18] Office of the Chief Coroner, *Verdict of the Coroner's* Jury (April 2016), Recommendation 7, available at: http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/Sampson_2016.pdf

SCHEDULE "A"

ADVOCATE'S OFFICE'S KEY RECOMMENDATIONS INCLUDING LANGUAGE FOR PROPOSED LEGISLATIVE CHANGES TO AMEND BILL 89

Schedule "A" lists the Advocate's Office's key recommendations and language changes to amend the current legislative scheme.

In Schedule "A", all references to Bill 89 (or the Act) refer to the *Child, Youth and Family Services Act, 2016* as proposed in Schedule "1" to Bill 89, unless otherwise indicated. Commentary on certain provisions of Bill 89 is set out in italics below the recommendations of the Advocate's Office. For convenience, we refer only to "children" (rather than to "children and youth") when referring to persons under 18 years old, unless the context requires otherwise.

An index of the recommendations is set out below:

I. Katelynn's Principle

Katelynn's Principle – best interests of the child

Although section 3 of Bill 89 provides rights to children and young people receiving services under the Act, Katelynn's Principle should also be reflected in the paramount purpose of the Act.

1. Amend section 1 (Paramount purpose and other purposes) of the Act to insert the following provision:

> (1.1) In determining the best interests of the child or youth in respect of all matters affecting the child or youth, the voice of the child or youth shall be solicited, heard, and considered, being given due weight and in appreciation of their evolving capacity, unless there is demonstrably good cause to do otherwise.

Katelynn's Principle – a child's general right to be heard

Although Part II confers certain rights on children, it falls short of what is afforded under Katelynn's Principle. For example:

- *The rights apply only when a child is "receiving services". They do not appear to apply when a decision is being made by a court or by an administrative body.*
- *There is no obligation on the service provider to provide the information and support necessary for a child to exercise their right to be heard meaningfully.*

2. Insert the following provision as sections 2.1 and sections 2.2 of the Act:

A child's right to be heard

2.1. Unless this Act expressly provides otherwise and without limiting any rights of the child or youth conferred by this Act, a decision-maker or service provider shall in all decisions affecting the child or youth pursuant to this Act:

(1) solicit, consider and give due weight to the views and wishes of the child or youth while respecting their evolving capacity in accordance with the age and maturity of the child or youth;

(2) take appropriate measures in a manner consistent with the age and evolving capacity of the child or youth:

(a) to provide to the child or youth the information required in order to understand the nature and the reasonably foreseeable consequences of the decision and any additional information requested by the child or youth; and

(b) to provide access to a child or youth to the support or assistance that they may require in expressing their views and wishes and in exercising their right to do so;

(3) in the context of a proceeding, provide an opportunity to hear or otherwise receive evidence from the child or youth directly or through a representative;

2.2 Notwithstanding section 2.1, a decision-maker or service provider may choose not to hear the views and wishes of the child or youth in a proceeding if:

(a) there is demonstrably good cause not to hear the views and wishes of the child or youth; and

(b) reasons are provided to justify the decision not to hear the views and wishes of the child or youth.

Katelynn's Principle – application to persons over 18 years old that receive services under the Act

The Advocate's Office recommends that a provision be inserted at the beginning of Part II (Children's and Young Persons' Rights) to provide that a reference in Part II to a child or young person is deemed to be a reference to a person over 18 years old that is receiving services under the Act and is not the parent of a child or a member of a child's community.

3. Ensure that the enactment of Katelynn's Principle into the Act equally applies to persons over 18 years old who are receiving services or are otherwise affected under the legislation.

Alternatively, ensure that each statutory decision in the Act specifically requires the voice of the child to be heard and given due weight

4. Alternatively, amend each provision of the Act involving a statutory decision affecting the child to specifically require the voice of the child to be heard and given due weight in accordance with Katelynn's Principle.

Appropriate access to legal counsel

5. Amend the Act to ensure that a child shall have access to the legal counsel or any provider of advocacy that is necessary and appropriate to allow the child to exercise those rights and participate in any decisions affecting the child or youth.

II. ***Rights of the child or youth to participate in decisions and to access administrative review***

Children to receive a reasonable response to concerns when raised

6. Amend section 3 to ensure that children receive a reasonable response to their concerns:

RIGHTS OF CHILDREN AND YOUNG PERSONS RECEIVING SERVICES

Rights of children, young persons receiving services

3. Every child and young person receiving services under this Act has the following rights:

. . .

4. To raise concerns or recommend changes with respect to the services provided or to be provided to them without interference or fear of coercion, discrimination or reprisal and to receive a timely and reasonable response to those concerns or recommended changes.

. . .

Services delivered to include meaningful participation of the child

7. Amend section 14 of the Act to read:

Children's, young persons' rights to respectful services

14. (1) Service providers shall respect the rights of children and young persons as set out in this Act and under the *Human Rights Code*.

Children, young persons to be heard and represented

(2) Service providers shall ensure that children and young persons and their parents have an opportunity, unless there is good cause to do otherwise ~~where appropriate~~, to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.

Criteria and safeguards re decisions

(3) Service providers shall ensure that decisions affecting the interests and rights of children and young persons and their parents are made according to clear, consistent criteria and are subject to appropriate procedural safeguards.

Notice and participation rights for a child under 12 years

8. Extend notice and participation rights to children under 12 years in child protection proceedings or any judicial or administrative matters that affect them, including the appropriate amendments to:

(a) section 63(1) [right to object and trigger a mandatory review by the advisory committee of a residential placement];

(b) section 64(2) [obligation for an advisory committee to advise the child of their rights under section 36 following the issuance of its recommendations];

(c) section 65(1) [right to apply to the Board for a review of the recommendation of an advisory committee];

(d) sections 78(5) [right to notice, to be present and presumptive right to participate in a child protection hearing];

(e) sections 95(9) [right to receive a copy of an assessment report], but subject to the discretion of the court to order that a copy or part of a copy of the report not be disclosed to a child if it would cause the child emotional harm;

(f) section 64(2) [right to be informed of the review procedures available]; and

(g) section 166 [right to apply for a court order terminating an order for commitment or extension under Part VI (Extraordinary Measures)].

Strengthening the service provider complaint process to protect children

9. Amend sections 17 and 18 to strengthen the ability of children to access the service provider complaint process:

COMPLAINTS AND REVIEWS

Complaints procedure

17. (1)

(a) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding alleged violations of the rights under this Part of children in care, and any other concerns raised by children in care.

(b) The written procedure for hearing and dealing with complaints shall ensure that:

(i) each child or young person is advised and is aware of their right to deliver a complaint under this section and to seek the assistance of the Provincial Advocate for Children and Youth to do so;

(ii) a timely and reasonable response is provided to the complaint; and

(iii) upon receiving the response of the service provider to the complaint, the child or young person is advised and is aware of their right to:

1. seek further review of the decision pursuant to section 18, and to seek the assistance of the Provincial Advocate for Children and Youth to do so; and

2. request that the Provincial Advocate for Children and Youth carry out an investigation in respect of the matters raised in their complaint.

Same

(2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,

(a) a child in care;

(b) the child's or young person's parent; ~~or~~

(c) another person representing the child or young person; or~~,~~

(d) a group of children in care,

and shall seek to resolve the complaint.

Complainant's remedy against reprisal

Although section 3(4) of Bill 89 provides a child or young person a right against reprisals, there is no specific remedy available to a child or young person if they are the subject of a reprisal.

10. Amend Part II of the Act to prohibit any reprisal against a person who claims or seeks to enforce their rights under the Act and provide appropriate remedies to safeguard the right against reprisals, in a manner similar to section 8 of the *Ontario Human Rights Code*.[19]

Information regarding the Advocate's Office to be provided at service provider premises

11. Amend Part V of the Act to ensure that all services funded under the Act are required to:

(a) prominently display on their premises in a manner visible to persons receiving services a poster advising clients of the contact information of and services provided by the Advocate's Office;

(b) advise and ensure that children and youth have the right to privately contact the Advocate's Office by telephone or in person;

(c) advise that reprisals on any person who contacts the Advocate's Office are prohibited; and

(d) make available informational materials produced by the Advocate's Office upon request.

III. ***Purposes of the Act***

Purpose of the Act to require compliance with the UN Convention on the Rights of the Child

Bill 89 only makes reference to the Convention in the preamble to the Act and merely asserts that its aim is to be consistent with the Convention. The purpose of the Act itself should recognize Ontario's obligation to provide services in accordance with the obligations agreed to in the Convention.

12. Amend the purpose of the Act under section 1(2) to ensure that services are provided in accordance with the United Nations Convention on the Rights of the Child (the "Convention"), as proposed in Bill 54, *An Act to amend the Child and Family Services Act with respect to children 16 years of age and older* (2014):

[19] Section 8 of the *Human Rights Code* reads: "8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing." R.S.O. 1990, c. H.19, s. 8.

1. Subsection 1 (2) of the Child and Family Services Act is amended by adding the following paragraph:

6. To recognize that services provided under the Act should be provided in accordance with the United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on November 20, 1989, and to which Canada is a party.

Purpose of the Act to require compliance with the *Charter* and the *Human Rights Code*

Reference to the Charter *and to the* Human Rights Code *is currently made only in the preamble. The purpose of the Act should reflect the intent expressed in the preamble by explicitly referring to that legislation.*

13. Amend the purpose of the Act under section 1(2) to include recognizing that services shall be provided under the Act in accordance with the *Charter of Rights and Freedoms* and the *Human Rights Code*

Purpose of the Act to require service providers to be "exemplars of meaningful participation"

14. Amend the purpose of the Act under section 1(2) to ensure that service providers operate as "exemplars for meaningful and empowered participation of children and youth" (similar to section 1(3)(2) of the *Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c. 9).

Purpose of the Act to require service providers to be exemplars of anti-racism and anti-discrimination

15. Amend the purpose of the Act under section 1(2) to recognize that service providers operate as exemplars of principles of anti-racism, anti-discrimination and the promotion of equitable outcomes in all services, policies, legislation and decision-making under the Act.

Alternatively, ensure that services are provided in accordance with the preamble

16. In the alternative, amend section 1 to require that services be provided in accordance with the principles and values articulated in the preamble to the Act.

IV. ***Legislative and policy-making processes***

"Child-first" legislative review policy

17. The Province should adopt a "child-first" policy and process for legislative review, in order to review all proposed legislation and policies for their impact on children and youth, and specifically address in that review the expected outcomes for all children and youth of the province.

Mandatory consultation with children in legislative review and policy-making processes

18. Amend Part XI and Part XII of the Act to:

(a) require the periodic legislative review process to include mandatory consultation with children;

(b) require any policy-making process by the Minister to involve mandatory consultation with children; and

(c) provide for regulation-making powers to define how such consultation processes are to be carried out.

Minister to report on review of services in relation to Aboriginal children

19. Amend section 315 of the Act as follows to require the Minister to report on their review of provisions imposing obligations on societies when providing services in relation to children who are First Nations, Inuit or Métis persons:

Review re: First Nations, Inuit and Métis issues

315. (1) Every review of this Act shall include,

(a) a review of the additional purpose of the Act described in paragraph 6 of subsection 1 (2), with a view to evaluating the progress that has been made in working with First Nations, Inuit and Métis peoples to achieve that purpose; and

(b) a review of provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person or in respect of First Nations, Inuit or Métis children, with a view to ensuring compliance by societies with those provisions.

(2) The Minister shall prepare a written report respecting the review pursuant to subsection (1) and shall make that report available to the public.

Reports of the Minister to be in plain language

20. Amend Part XI (Miscellaneous) to require any reports published by the Minister to be in plain language.

V. ***Collection of data***

Annual report by the Minister

21. Amend Part XI (Miscellaneous) to require the Minister to publish an annual report that reports, in plain, accessible language, on:

(a) the safety, well-being, economic conditions, and social conditions of children and youth, including any outcomes prescribed by regulation;

(b) the services provided by children's aid societies;

(c) the conditions, period of time, and stability of residential placements of children and youth; and

(d) the well-being, and economic and social conditions of children and youth living in communities which are disproportionately represented in receiving or seeking services under this Act.

Regulations prescribing reporting on outcomes and collection of disaggregated data

Under section 279 of Part X (Personal Information), the Minister may now collect personal information for the purposes of delivering services and to conduct research and analysis in relation to children. The Advocate's Office believes that the Act should specifically grant the Minister the power to go a step further to enact by regulation certain target outcomes and goals for children and youth, and then collect data for the purpose of ensuring that those target outcomes and goals are being achieved.

22. Amend Part XII (Regulations) to authorize the Minister to enact regulations with respect to:

(a) establishing target outcomes and measurable results for children and youth who are in care and for children and youth at the time that they leave care, with reference to the following non-exclusive list of target outcomes:

(i) Children and youth have stable and secure homes and living conditions rather than a placement, including customary care arrangements and culturally-appropriate placements;

(ii) Children and youth have permanent resident or refugee status in Canada;

(iii) Children and youth have identification available to them and leave care with identification;

(iv) Children and youth leave care with a source of income, in their own right when aging out of the system;

(v) When younger children are leaving to the care of an adult, a children's aid society has ensured adequate financial support, through subsidies or other government programs, as needed;

(vi) Children and youth have a connection to a caring adult or peer;

(vii) Preventive measures are taken and resources are made available to ensure the person with custody of a child, the extended family of a child, and the community of a child are supported in the performance of child-rearing responsibilities; and

(viii) Services and resources are made available to ensure that a child is not separated from their family or from their community because of disability, lack of health care, educational needs and inadequate shelter or financial hardship.

(b) establishing a consultation process that involves the participation of young people to define additional target outcomes and measurable results; and

(c) collecting data that is disaggregated to reflect the outcomes of children and youth from disadvantaged groups in respect of the target outcomes identified above, including those who are disproportionately represented in receiving or seeking services under this Act and those identified in the *Poverty Reduction Act, 2009*

*VI. **Privacy and protecting personal information***

Notice of collection, use or disclosure without consent

23. Amend section 282 to clarify in the marginal note that the provision applies to use and disclosure and to require an individual to be given notice of a collection, use or disclosure of personal information without consent:

Collection, use or disclosure ~~etc.~~ of personal information — requirement for consent

282. A service provider shall not collect personal information about an individual for the purpose of providing a service or use or disclose that information unless,

(a) the service provider has the individual's consent under this Act and the collection, use or disclosure, to the best of the service provider's knowledge, is necessary for a lawful purpose; or

(b) (i) the collection, use or disclosure without the individual's consent is permitted or required by this Act, and

(ii) written notice is provided to the individual within a reasonable period of time following the collection, use or disclosure without consent, unless such notice is prohibited by this Act or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

No use or disclosure of personal information except where expressly permitted

24. In addition to the prohibitions set out in section 282, amend section 287 (Use) and section 288 (Disclosure Without Consent) to expressly prohibit the use or disclosure of personal information without consent, except in accordance with the Act:

Use

287. (1) A service provider shall not ~~may~~ use personal information in its custody or under its control ~~collected for the purpose of providing a service~~, except:

(a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, including providing the information to an officer, employee, consultant or agent of the service provider, unless ~~but not~~

(i) ~~if~~ the information was collected with the consent of the individual or under clause 284 (2) (a); and

(ii) the individual expressly instructs otherwise;

. . .

Exception

(2) (a) Despite clause (1) (a), where the individual to whom the personal information relates expressly instructs otherwise, a society may nonetheless use that personal information for a purpose related to a society's functions under subsection 34 (1) where it is in the best interests of the ~~a~~ child to do so.

(3) For greater clarity, the provisions authorizing use of personal information under this Part do not authorize the disclosure of personal information unless expressly permitted under this Part.

Disclosure without consent

288. (1) A service provider shall not ~~may~~, without the consent of the individual, disclose personal information about an individual in its custody or under its control ~~that has been collected for the purpose of providing a service~~, except:

. . .

Disclosure without consent only where there is a risk of serious harm

25. Amend section 288(1)(g) to permit disclosure without consent only where a service provides has reasonable grounds to believe that there is a risk of serious harm:

Disclosure without consent

288.

. . .

(g) if the service provider believes on reasonable grounds that there is a risk of serious harm to a person or group of persons and the disclosure is necessary to assess, reduce or eliminate the ~~a~~ risk of serious harm to a person or group of persons; or

. . .

Refusal to provide consent

26. Amend sections 284 and 285 such that an individual's refusal to provide their consent is not a circumstance in which it is not reasonably possible to collect information from that individual:

With consent

284. (1) A service provider may collect personal information indirectly for the purpose of providing a service if the individual to whom the information relates consents to the collection being made indirectly.

Without consent

(2) A service provider may collect personal information indirectly for the purpose of providing a service and without the consent of the individual to whom the information relates if,

(a) the information to be collected is reasonably necessary to provide a service, and it is not reasonably possible to collect personal information directly from the individual and the individual has not withheld their consent to collect the information,

(i) that can reasonably be relied on as accurate and complete, or

(ii) in a timely manner;

. . .

Direct collection without consent

285. A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if the collection is reasonably necessary for the provision of a service and,

(a) it is not reasonably possible to obtain consent in a timely manner and the individual has not specifically withheld their consent, or

(b) there are reasonable grounds to believe that there is a risk of serious harm to a person or group of persons and the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.

Strengthen procedural safeguards in obtaining the consent of an individual

27. Amend sections 291 to 294 to strengthen the protections ensuring that a child or young person is able to give, withhold or withdraw consent to the collection, use or disclosure of their personal information:

Consent

291.

. . .

Implied consent

(2) A consent to the collection and use of personal information may be implied if the collection is made directly from the individual to whom the information relates, ~~and~~ is collected for the purpose of providing a service, and the use of personal information is reasonably incidental to the provision of that service.

Notice of purposes

(5) Unless it is not reasonable in the circumstances, an individual is deemed to know the purposes of the collection, use or disclosure of personal information about the individual if the service provider,

(a) posts a notice describing the purposes where it is likely to come to the individual's attention;

~~(b) makes such a notice readily available to the individual;~~

(b) ~~(c)~~ gives the individual a copy of such notice; or

(c) ~~(d)~~ otherwise communicates the content of such notice to the individual.

. . .

Conditional consent

293. (1) If an individual places a condition on their consent to the collection, use or disclosure of personal information, the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal information by a service provider that is required by law ~~or by established standards of professional or institutional practice~~.

(2) If subsection 293(1) applies, the individual placing the condition on their consent shall be so informed prior to providing their consent.

Presumption of consent's validity

294. (1) A service provider that has obtained an individual's consent to the collection, use or disclosure of personal information about the individual or who has received a copy of a document purporting to be a record of the individual's consent, may presume that the consent fulfils the requirements of this Act and that the individual has not withdrawn it, unless it is not reasonable to do so.

(2) For the purposes of subsection 294(1), it is not reasonable to presume that the consent fulfils the requirements of this Act and the individual has not withdrawn it if there has been a material change in circumstances that is likely to affect the decision of the individual to consent.

Substitute decision-maker to consider relevant factors

28. Amend section 296 to require a substitute decision-maker to consider the factors prescribed in section 24 of the *Personal Health Information Protection Act, 2004* before consenting, withholding or withdrawing consent:

Substitute decision-maker

296.

. . .

(5) A person who acts as the substitute decision-maker of an individual and who consents, withholds or withdraws consent on behalf or in place of that individual under this Part shall take into consideration the factors prescribed in section 24 of the *Personal Health Information Protection Act, 2004* with such modifications as may be necessary in the circumstances.

Custodian to explain purpose and nature of records subject to an access request

29. Amend section 305(1) to require a service provider to explain the purpose and nature of the record, including any information that may reasonably be expected to cause emotional harm:

Response of service provider

305. (1) A service provider that receives a request from an individual for access to a record of personal information shall,

(a) (i) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual, ~~and~~

(ii) explain the purpose and nature of the record, including any information that may be reasonably expected to cause emotional harm to the individual, and

(ii) if reasonably practical, provide an explanation of any term, code or abbreviation used in the record;

. . .

VII. ***Expanding protections to children in care***

Extension of protection services for persons between ages 16 to 18 only with their consent

30. Amend section 73 of Part V (Child Protection) to extend protection services to a young person between the age of 16 to 18 only with their express consent, unless the young person is incapable with respect to personal care.

The Act should put in place a reasonable process that prescribes who can make a finding of incapacity and how, and that provides an appeal process to review such findings using the mechanisms provided under the *Health Care Consent Act, 1996*:

INTERPRETATION

Interpretation

73.

. . .

Protective orders in relation to a young person over 16 years only with consent

(7) (a) No order shall be issued and no power shall be exercised under this Part in relation to a young person over 16 years of age without the written consent of that person, unless that person is incapable with respect to personal care.

Expanded rights of a child in care

31. Amend the rights of children in care under section 12(2) of the Act as follows:

Plan of care

12. (1) A child in care has a right to a plan of care designed to meet their particular needs, which shall be prepared within 30 days of the child's or young person's admission to the residential placement.

Rights to care

(2) A child in care has a right,

(a) to participate in the development of their individual plan of care and in any changes made to it;

(b) to access food, including ~~receive~~ meals, that are well-balanced, of good quality and appropriate for the child or young person;

(c) to be provided with clothing that is of good quality and appropriate for the child or young person, given their size and activities and prevailing weather conditions;

(d) to receive medical and dental care, subject to section 13, at regular intervals and whenever required, in a community setting whenever possible;

(e) to receive an education that corresponds to their aptitudes, ~~and~~ abilities, and aspirations, as understood by the child, in a community setting whenever possible; and

(f) to participate in recreational ~~and~~, athletic, and creative activities that are appropriate for their aptitudes and interests, in a community setting whenever possible.

(g) to have the opportunity to form permanent and lifelong relationships that meet their personal and cultural needs;

(h) to grow up with many opportunities to develop relationships with siblings and extended family and to grow up with many opportunities to develop permanent, supportive relationships with caregivers, staff and community members;

(i) to be supported to participate fully and successfully in community-based elementary and secondary school;

(j) to develop life skills that nurture their identity, cultural pride, spiritual development, language, self-esteem, resiliency, leadership, ability to engage in self-advocacy;

(k) to comprehensive support for physical, psychological, spiritual, social, emotional, cognitive and cultural well-being and overall health;

(l) to participate in extracurricular activities that include access to robust high quality cultural and traditional activities and knowledge, in accordance with the individual's interests;

(m) to be protected from any form of discrimination;

(n) to the preservation of the identity of the child, including the name, language and culture of the child;

(o) to be provided with a photo card under the *Photo Card Act, 2008*, S.O. 2008, c. 17 or an equivalent form of identification confirming the identity of the child, and to possess or be provided with such identification upon leaving care; and

(p) if the child is not a citizen of Canada, to be advised of their status under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. , and to be provided any status to which they would be entitled upon making an application or claim under that Act.

Right to private telephone calls and electronic communications

32. Amend section 9 of the Act as follows:

Rights of communication, etc.

9. (1) A child in care has a right,

(a) to speak in private with, visit and receive visits from members of their family or extended family regularly, including in a telephone conversation, subject to subsection (2);

(b) to speak in private with and receive visits, without delay, from,

(i) their lawyer,

(ii) another person representing the child or young person, including the Provincial Advocate for Children and Youth and members of the Provincial Advocate for Children and Youth's staff,

(iii) the Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff, and

(iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and

(c) to send and receive written communications in private that are not read, examined or censored by another person, subject to subsections (3) and (4).

(d) to speak or otherwise communicate with any person, including through any telecommunication device, subject to any restriction in this section or any other restriction imposed by law or imposed by the service provider as are necessary and reasonable in the circumstances.

Opening, etc., of written communications to child in care

(3) Subject to subsection (4), written communications to a child in care,

. . .

(c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's or young person's lawyer or if it is to or from a person described in sub clause (1) (b) (ii), (iii) or (iv); and

Right of children to meet privately with an inspector

33. Amend section 273 to ensure that a child has the right to meet privately with an inspector in the course of an inspection under Part IX (Residential Licensing):

Powers on inspection

273. (1) An inspector conducting an inspection may,

. . .

(g) question a person, including a child, on matters relevant to the inspection;

Child's right to meet privately with inspector ~~refuse~~

(4) (a) An inspector shall give reasonable notice, in such a manner as is appropriate in the circumstances, to any child that is receiving services relating to the matters subject to inspection.

(b) The inspector shall advise and ensure that each child receiving notice of the inspection under subparagraph (a) is afforded the opportunity to meet privately with the inspector during the course of the inspection and discuss any matters of concern.

(c) Despite clause (1) (g), a child may refuse to be questioned by an inspector.

. . .

Strengthen the role and mandate of the residential placement advisory committees

34. Amend sections 62 to 64 to strengthen the role and mandate of the residential placement advisory committees and the participation of children in their decision-making process:

Residential placement advisory committees

62. (1) The Minister shall ~~may~~ establish residential placement advisory committees, each consisting of no less than three persons who are engaged in providing services or who have demonstrated an informed concern for the welfare of children, and ~~one or more persons~~ whom the Minister considers appropriate, including, if the Minister wishes, a representative of a band or First Nations, Inuit or Métis community, and shall specify the territorial jurisdiction of each advisory committee.

. . .

Reports to Minister

(4) An advisory committee shall make a report of its activities to the Minister annually and whenever the Minister otherwise requests it.

Review by advisory committee

Mandatory review

63. (1) An advisory committee shall review,

(a) every residential placement in an institution of a child who resides within the advisory committee's jurisdiction, if the residential placement is intended to last or actually lasts 90 days or more,

(i) as soon as possible, but no later than 45 days after the day on which the child is placed in the institution,

(ii) unless the residential placement is reviewed under sub-clause (i), within 12 months of the establishment of the advisory committee or within such longer period as the Minister allows, and

(iii) while the residential placement continues, at least once during each nine-month period after the review under sub-clause (i) or (ii);

(b) every residential placement of a child ~~12 or older~~ who objects to the residential placement or otherwise requests a review of the residential placement and resides within the advisory committee's jurisdiction,

(i) within the week immediately following the day that is 14 days after the child is placed, and

(ii) while the residential placement continues, at least once during each nine-month period after the review under sub-clause (i); and

. . .

Review to be informal, etc.

(3) An advisory committee shall conduct a review under this section in an informal manner and in the absence of the public, and in the course of the review,

(a) shall have one or more members of the advisory committee,

(i) interview the child; and

(ii) attend at the residential placement;

(b) may,

(i) ~~(a)~~ interview ~~the child,~~ members of the child's family and any representatives of the child and family;

. . .

Matters to be considered

(5) In conducting a review, an advisory committee shall,

(a) solicit, consider and give due weight to the views and wishes of the child or youth while respecting their evolving capacity in accordance with the age and maturity of the child or youth;

(b) ~~(a)~~ consider whether the child has a special need;

. . .

(f) in the case of a First Nations, Inuk or Métis child, also consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

(g) in the case of an African Canadian child, also consider the importance, in recognition of the uniqueness the child's cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

Advisory committee's recommendations

Persons to be advised

64. (1) An advisory committee that conducts a review shall advise the following persons of its recommendations as soon as the review has been completed:

1. The service provider.

2. Any representative of the child.

3. The child's parent or, where the child is in a society's lawful custody, the society.

4. The child, in a manner and form in which the child can understand ~~where it is reasonable to expect the child to understand~~.

5. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2, 3 and 4 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

. . .

Child to be advised of reasons for placement or discharge

35. Amend section 21(7) to ensure that the child is advised of the reasons for a residential placement or discharge:

21.

. . .

Child's views and wishes

(7) (a) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's views and wishes into account, given due weight in accordance with the child's age and maturity.

(b) The child shall be advised in a manner and form they can understand of the reasons for any decision to be placed in or discharged from a residential placement or transferred from one residential placement to another, whether or not the consent referred to in subsection (2) was given or required.

Financial and other support for persons in care over 16 years

36. Ensure that young people who enter care over the age of 16 years are entitled to financial and other supports, including under the Continued Care and Support for Youth (CCSY) program (including tuition assistance).

Eligibility for social assistance

37. Ensure that young people between 16 to 17 years of age who withdraw from parental control but do not enter the care of a children's aid society are not prohibited from applying for Ontario Works or other social assistance programs.

Transition support for persons up until 25 years

38. Amend section 13(4) of Part IV (Extended Care) of the *Procedures, Practices and Standards of Service for Child Protection Cases*, O. Reg. 206/00 to extend the maximum age of extended care to 25 years of age. The policies governing benefits conferred under extended care should include medical, dental and prescription coverage, support services necessary for transition, and grants for emergency housing costs.

VIII. ***Use of secure de-escalation, seizures, and other intrusive procedures***

No secure de-escalation for a period of more than 24 hours

39. Amend section 171 of Part VII (Extraordinary Measures) to prohibit the use of secure de-escalation in regard to any young person for a period that exceeds 24 consecutive hours.

Review of secure de-escalation

40. Amend section 149(1) of Part VI (Youth Justice) as follows to provide for a review of the secure de-escalation of any young person for a period that exceeds 24 hours:

Application to Board

149. (1) A young person may apply to the Board for a review of,

(a) the particular place where the young person is held or to which the young person has been transferred;

(b) a Provincial Director's refusal to authorize the young person's reintegration leave under section 91 of the *Youth Criminal Justice Act* (Canada); ~~or~~

(c) the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the *Young Offenders Act* (Canada) in accordance with section 88 of the *Youth Criminal Justice Act* (Canada)~~.~~; or

(d) the placement of a young person in a secure de-escalation room for a period of greater than 24 hours or in a manner that is otherwise not appropriate in the circumstances.

Power of Board to order remedies in respect of review of secure de-escalation

41. Amend section 149(1) of Part VI (Youth Justice) as follows to permit the Board to order the release of a young person from secure de-escalation and other remedies:

149.

. . .

(8) After conducting a review under subsection 2(d), the Board may make one or more of the following orders,

(a) an order that the young person be released from secure de-escalation;

(b) an order directing any party to the review to do anything that, in the opinion of the Board, the party ought to do to promote compliance with this Act, including an order directing a party to pay compensation to the young person.

Mandatory reports on the use of secure de-escalation

42. Amend section 172 to require a written report to the Director on the use of a secure de-escalation room:

Review of use of secure de-escalation

172. (1) A person in charge of premises containing a secure de-escalation room shall review,

(a) the need for the secure de-escalation room; and

(b) each instance of the use of the secure de-escalation room; and

(c) ~~(b)~~ the prescribed matters,

every three months or, in the case of secure custody or secure temporary detention, every six months from the date on which the secure de-escalation room is approved under subsection 170 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

(2) the written report delivered pursuant to clause 172(1)(b) shall include:

(a) a written record of each instance of the use of a secure de-escalation room that shall include:

(i) the name and age of each child or young person placed in secure de-escalation;

(ii) the dates and the duration of each use for each child or young person;

(iii) the grounds on which the service provider determined that the criteria for the use of secure de-escalation were present; and

(b) a report of any instance in which the use of a secure de-escalation room did not comply with the requirements of this Act, the regulations enacted under this Act, and any applicable policies.

No seizure of goods based on quantity alone

43. Amend section 152 to prohibit the seizure of goods that a child is authorized to have but that are found to exceed the permitted quantity of those goods:

SEARCHES

Permissible searches

152. (1) The person in charge of a place of open custody, of secure custody or of temporary detention may authorize a search, to be carried out in accordance with the regulations, of the following:

. . .

Contraband

(2) Any contraband found during a search may be seized and disposed of in accordance with the regulations.

Meaning of contraband

(3) For the purposes of subsection (2),

"contraband" means,

(a) anything that a young person is not authorized to have,

(b) anything that a young person is authorized to have but in a place where they are not authorized to have it,

~~(c) anything that a young person is authorized to have but in a quantity in which they are not authorized to have it, and~~

(d) anything that a young person is authorized to have but that is being used for a purpose for which they are not authorized to use it.

Mandatory establishment of a professional advisory board

44. Amend section 174 to require the establishment of a professional advisory board:

PROFESSIONAL ADVISORY BOARD

Professional Advisory Board

174. (1) The Minister shall ~~may~~ establish a Professional Advisory Board, composed of physicians and other professionals who,

(a) have special knowledge in the use of intrusive procedures and psychotropic drugs;

(b) have demonstrated an informed concern for the welfare and interests of children; and

(c) are not employed in the Ministry.

Review teams to review use of intrusive measures

45. Amend Part VII (Extraordinary Measures) to include the review teams to review the use of intrusive measures, which are currently provided for under section 129 of the *Child and Family Services Act* but are excluded from the new Act.

IX. ***Other recommendations***

Minister's mandate

46. Amend the Act to expressly confer on the Minister the responsibility and the mandate:

(a) to take preventative measures and make resources available to ensure the person with custody of a child, the extended family of a child, and the community of a child are supported in the performance of child-rearing responsibilities;

(b) to make services and resources available to ensure that a child is not separated from their family or from their community because of disability, lack of health care, educational needs and inadequate shelter or financial hardship.

(c) to ensure that funding and other support provided to children who are Aboriginal is comparable in quality and accessibility to services provided to other children, and is adequate to meet their needs.

Crown Liability

47. Amend section 33 of the Act to provide that a children's aid society is an agent of the Crown and that the Crown remains responsible for how the obligations of a children's aid society to vulnerable children are discharged, irrespective of Ontario's policy choice to delegate that responsibility to a children's aid society:

CHILDREN'S AID SOCIETIES

Children's aid society

Designation

33. (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 34 (1).

. . .

~~Not~~ Crown agents

(5) A society and its members, officers, employees and agents are deemed to be ~~not~~ agents of the Crown in right of Ontario ~~and shall not hold themselves out as such~~.

~~No Crown liability~~

~~(6) No action or other proceeding shall be instituted against the Crown in right of Ontario for any act or omission of a society or its members, officers, employees or agents.~~

Enhanced understanding of extended family

48. Amend the definition of "extended family" under section 3(1) to include a person with whom the child or youth wishes to sustain a bond and regards as significant, caring, supportive in their lives, and important to their sense of identity, healthy growth and development.

Remedies for breach of duty to report by non-professionals

49. Amend section 72 of the Act to introduce administrative or other remedies against non-professionals who have direct and substantive knowledge of child abuse and neglect, and fail to report that child abuse or neglect.

Mandatory publication of compliance orders

50. Amend section 32(4) to require the publication of compliance orders:

Compliance order

Grounds

32. (1) A program supervisor may make an order under subsection (2) if the program supervisor believes on reasonable grounds that a service provider or lead agency has failed to comply with,

(a) this Act or the regulations;

. . .

Public availability

(4) The Minister shall publish ~~may make~~ orders made under this section and ensure that they are available to the public.

Mandatory publication of information about licenses

51. Amend section 250 of the Act to require the Minister to publish information with respect to licenses:

Publication of information by Minister

250. (1) The Minister shall ~~may~~ publish the following information with respect to licenses and applications for licenses:

1. The name of the licensee and prescribed contact information.

. . .

Timely response to reports or recommendations

52. Amend Part XII (Miscellaneous) to ensure that service providers under the Act are required to provide, without undue delay and in good faith, a reasonable response to any report or recommendation relating to services provided under the Act that is delivered to the service provider pursuant to any statutory power.

SCHEDULE "B"

ADDITIONAL RECOMMENDATIONS OF THE ADVOCATE'S OFFICE TO AMEND BILL 89

Schedule "B" provides additional recommendations of the Advocate's Office to amend the current legislative scheme.

In this Schedule, all references to Bill 89 (or the Act) refer to the *Child, Youth and Family Services Act, 2016* as proposed in Schedule "1" to Bill 89, unless otherwise indicated.

Commentary on certain provisions of Bill 89 is set out in italics below the recommendation of the Advocate's Office.

An index of the additional recommendations is set out below:

I. Part II – Children and Young Person's Rights

1. Rights of child or young person receiving services

The Act is missing enabling elements of Katelynn's Principle.[20] *It is recommended that language of the Principle, containing the Office's broadened definition, be directly applied in section 3, for example:*

[20] Use of the term "Katelynn's Principle" is not restricted to the definition provided by the Katelynn Sampson Inquest jury. The Advocate's Office believes the "principle" needs to be broadened so that children and youth are given every support necessary to participate in their own lives. Decision-makers must ensure young people have access to age appropriate resources at all stages of development to help them develop the awareness it takes to understand what is happening to them.

i) right to be consulted as well as participate in all decision-making;

ii) right to be informed about channels for complaints or recourse;

iii) recognition of evolving capacity;

iv) recognition of the child as distinct and separate from caregivers;

v) right to available support to assist child in sharing their voice;

vi) right to be informed of the Advocate's Office, how to contact the Office, that contact must be private, and that contacting the Office will not result in any repercussions to the young person.

2. Amend the language in section 3 (3) to read:

3. Every child and young person receiving services under this Act has the following rights:

3. To be consulted on the nature of the services provided or to be provided to them, <u>participate in decisions about the services provided or to be provided to them</u>, and advised of the decisions made in respect of those services.

Right to be heard in respect of decisions

3. Amend Section 7 (1) (c) to reflect the right to be heard in all decision-making regarding a placement to read:

(c) the child's or young person's <u>placement in a residential placement</u>, discharge from a residential placement or transfer to another residential placement

4. *Although section 7 includes the right to be heard, an amendment should be made to include the right to participate in all decision-making that affects the child or young person consistent with Katelynn's Principle.*

Right to be informed

5. Amend Section 8 by applying right to be informed of any program or services being sought or received rather than limited to admission to residential placement

and

deleting language "to the extent that it is practical."

Blanket prohibition regarding identification of young people receiving child welfare services

6. *Section 85 deals with media access to child protection hearings to include language that better safeguards for the privacy of young people and their families. The preamble to the new Act contains an acknowledgement by the Government of Ontario that (a) children are individuals*

We believe must be an obligation on the part of all caregivers, service providers and government to place children at the centre of all decision-making affecting their lives.

with rights to be respected and voices to be heard, and (b) the aim of the new Act is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child. Although the true purpose of 85 (8) is to protect the privacy of those involved in a child protection proceeding, one consequence of the language used could be the complete silencing of youth voice and the right of youth of sufficient age and maturity to freely express themselves in a public forum about their experiences. To avoid this unintended consequence, amend the Act to include language that address the following:

Absolute prohibition re identifying child under the age of 16

> No person shall publish or make public information that has the effect of identifying a child who is under the age of 16 and is a witness at or a participant in a hearing or the subject of a proceeding
>
> and

Prohibition re identifying child over the age of 16 without consent

> No person shall publish or make public information that has the effect of identifying a child who is over the age of 16 and is a witness at or a participant in a hearing or the subject of a proceeding without the child's consent
>
> and

Prohibition re identifying parents, foster parents and members of a child's family without consent

> No person shall publish the name or address of the parents, foster parent, or family member of a child who is a witness at or a participant in a hearing or the subject of a proceeding without the person's consent

Condition and limitations on visitors

7. Amend Section 10 by adding a review process for visitor restrictions as prescribed by regulations.

Personal liberties

8. *The exclusion of the word "religion" from the* Act *and use of the word "creed" in section 11 raises concern that by not being explicit in terms of definition, the obligation to be responsive and provide appropriate cultural awareness or sensitivity training may be given less attention. The Office is concerned that in everyday application the term could be problematic as this change in language in the* Act *may minimize the importance or relevancy of the need to respect a young person's right to practice their religion or spiritual beliefs.*

Plan of Care

9. Amend section 12 to include:

(2) At every plan of care an agency or service provider, as the case may be, shall inform a child in care, in language suitable to his or her understanding, of the existence and role of the Advocate's Office and of how the Advocate's Office may be contacted.

and

(3) An agency or service provider, as the case may be, shall afford a child or youth who wishes to contact the Advocate's Office with the means to do so privately and without delay.

Service Providers' Duties In Respect Of Children's And Young Persons' Rights

10. *Section 14 language should refer to Katelynn's Principle to ensure the child is part of the decision-making process as follows:*

(2) Service providers shall include children, give due weight and consideration and provide support to allow for child's participation and voice to be heard in all decisions affecting them.

II.	***Part III – Funding and Accountability***

Funding and Accountability

11. Make amendments to clarify the need to make public any directives and compliance orders covered in sections 31 (6), 32 (4), 41 (5), 42 (4)

and

amend to include the following provision… available to the public by, at minimum, posting and making accessible on the Ministry website.

No Crown Liability

12. Section 33 (6) to be deleted in its entirety.

Reports made public by Minister

13. Amend section 55 to include the following provisions:

(c) Public reports must be accessible and written in plain language;

(d) Where the Minister finds that certain populations of children and young people are overrepresented, the Minister will request information from service providers and lead agencies at the prescribed intervals.

Public reports to be accessible

14. Amend section 57 to read as follows:

Every service provider and lead agency shall make the prescribed information available to the public in the prescribed manner, in plain language, and be accessible to youth.

And to include the following provisions:

Every service provider and lead agency shall report data publicly on overrepresented groups.

and

Where the Minister has found that certain populations of children and young people are overrepresented every service provider and lead agency from whom the Minister has requested information shall make information available to the public, in plain language, and be accessible to youth.

RPAC

15. Include previous CFSA S34.2 language that ensures the Ministry Representative be included as member to committee.

III. ***Part V – Child Protection***

Interpretation

16. 73 (2) (o) the child is 16 or 17, is at risk of harm as specified in (a)-(k) and lacks capacity to make decisions for themselves.

Apprehension of children over 16 who are removed from or leave care

17. Only those 16 and 17 year olds who are at risk of harm and lack the capacity to make their own decisions may be apprehended under this section.

Access Orders – who may apply

18. *A provision should be in place to advise siblings, extended families and communities of their right to apply for access and where they may seek support to do so. Siblings should have supports provided to assist them in making an application for access.*

Amend section 101 to clarify that a sibling may apply for an access order as follows:

101 (2) 2. Any other person, including a sibling of the child or, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

Amend section 102 by repealing subsection 5; delete subsection 4; replace with best interest test to reinforce the right of the child to access.

Withholding and withdrawal of consent to treatment

19. Amend sections 107 Child in interim society care and 108 to clarify that: (1) a society may withhold or withdraw consent and (2) a court should consider whether an issue of consent to treatment is not more appropriately addressed by the Consent and Capacity Board:

Section 107 (2) (2) Where a child is in interim society care under an order made under paragraph 2 of subsection 98 (1), and the child is found incapable of consenting to treatment under the *Health Care Consent Act*, 1996, the society may act in the place of a parent in providing, withholding or withdrawing consent to treatment on behalf of the child, unless the court orders that the parent shall retain the authority under that Act to give or refuse consent to treatment on behalf of the incapable child.

Section 107 (4) The court may authorize the society to act in the place of a parent in providing consent to the treatment on the child's behalf where,

(a) a parent referred to in an order made under subsection (2) refuses or is unavailable or unable to consent to treatment for the incapable child,

(b) the court is satisfied that the treatment would be in the child's best interests, and

(c) the court is satisfied that it is not more appropriate for the matter be resolved through an application before the Consent and Capacity Board under Part II of the *Health Care Consent Act*.

Delete: ~~Where a parent referred to in an order made under subsection (2) refuses or is unavailable or unable to consent to treatment for the incapable child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to act in the place of a parent in providing consent to the treatment on the child's behalf.~~

Consent to Treatment

20. Amend Section 108 (2) as follows:

Where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), and the child is found incapable of consenting to treatment under the *Health Care Consent Act*, 1996, the society may act in the place of a parent in providing, withholding or withdrawing consent to treatment on behalf of the child.

Society's obligation to pursue family relationship for child in extended society care

21. Amend section 109 to read:

Where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the society shall include the participation of the child, according to their evolving capacity, in determining the family relationship the child wishes to have, and make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:….

Complaint to Society

22. Amend section 116 to ensure that the complaint process is publically available and is advised of the right to apply to the Child and Family Services Review Board for review or request an investigation by the Advocate's Office:

Public availability

(3) A society shall make information relating to the complaint review procedure publicly available.

Amend section 116 to read:

Society's decision

(5) ~~(4)~~ Subject to subsection (7) ~~(5)~~ the decision of a society made upon completion of the complaint review procedure is final.

Notice regarding right of review and right to request an investigation by the Advocate's Office

(6) Upon rendering a decision in relation to a complaint, the society shall advise the complainant of:

(a) their right to apply for review by the Child and Family Services Review Board, and

(b) their right to request that the Advocate's Office carry out an investigation in respect of the subject-matter of the complaint.

Application for review by the Child and Family Services Review Board

(7) ~~(5)~~ If a complaint relates to one of the following matters, the complainant may apply to the Board in accordance with the regulations for a review of the decision made by the society upon completion of the complaint review procedure:

1. A matter described in subsection 117 (4).
2. Any other prescribed matter.

Continued Care and Support

23. Amend language in section 121 by removing "may" to require a Society to provide support to someone over 18, as well as following amendments:

121 (1) A society and, in the case of a First nations, Inuk or Métis person, an agency, will offer care and support to a person in accordance with the regulations in one of the following circumstances:…

Continued Care and Support for Youth (CCSY) program be made available to all those who have signed an agreement as a 16 or 17 year old:

121 (1) 2. The person entered into an agreement with the society under section 76 and the agreement has expired ~~on the person's 18th birthday~~.

Society to assess and verify report of child in need of protection

24. Amend section 123 (2) as follows:

No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, <u>according to the principles of the Act,</u> for an act done in the execution or intended execution of the duty imposed on the society by subsection (1) or for an alleged neglect or default of that duty.

Service providers not liable for providing services to a child outside the care of a society

25. Amend section 137 to ensure that a service provider will not be guilty of an offence for providing services to a child or young person who withdraws from the care of a society

<u>(2) Nothing in this section prohibits a service provider or any person acting on their behalf from providing services to a child or youth over 16 years of age and any such person shall not be liable for doing so if acting in the ordinary course of their activities and in good faith.</u>

IV. ***Part VI – Youth Justice***

Permissible searches

26. Delete 152 (4)

152 (4) Any vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention.

V. ***Part VII – Extraordinary Measures***

Mechanical Restraints

27. The legislated use of mechanical restraints works against the principles of the Act, therefore section 157 should be deleted in its entirety.

Emergency Admission

28. Amend section 168 (3) to delete Emergency admission on consent.

Secure De-escalation

29. Amend section 171 (9) by deleting in its entirety as the Advocate's Office rejects the change in terminology to "secure de-escalation" and to reflect that time restrictions on secure isolation should be the same for all young people and should not be excessive.

VI. ***Part VIII – Adoption and Adoption Licensing***

Application to vary or terminate openness order before adoption

30. Amend section 195 (8) to include

At any time….matter that is relevant to the proceeding…..

The court will adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution where the child has requested to maintain contact with a family member or it has previously been determined to be in the child's interest to do so.

VII. ***Part IX – Residential Licensing***

Directive by Minister

31. Amend section 249 and 250 to include the following language:

Public reports made in formats that are accessible in plain language.

Publication Information by Minister

32. Amend section 250 to include language of other prescribed reports to also be released publicly

Reports on Certain Matters to Directors

33. Amend section 247 (5) of the Act to be consistent with Part X section 308 and amend the Act to include the following:

Non-retaliation

247. (5) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,

a) the person, acting in good faith and on the basis of reasonable belief, has made a report to a Director that there is an immediate threat to the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a license

b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that would remove an immediate threat to the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a license

c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that would present an immediate threat to

the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a license

d) any person believes that the person will do anything described in clause (a), (b) or (c).

Purpose of Inspection

34. Amend section 271 to include language:

…and for the purposes of evaluating Quality of Care

- This can be a prescribed report

Amend section 273 (1) (h) to call upon an expert for assistance in carrying out inspections and to assist in evaluating the quality of care issues and developing program response.

VIII. ***Part X – Personal Information***

Elements of Consent

35. Amend section 291(5) by deleting (a) from the Act and revising the following to be consistent with *Health Care and Consent Act* 11(2) and (3) regarding defining consent

Amend section 291 (5) to read:

(a) makes such a notice describing the purposes readily available to the individual;

(b) gives the individual a copy of such notice; ~~or~~ and

(c) otherwise communicates the content of such notice to the individual, in plain language, and by providing to the person the information about:

1. The nature of the collection, use or disclosure of personal information
2. The expected benefits of the collection, use or disclosure of personal information
3. The material risks of the collection, use or disclosure of personal information
4. The likely consequences of not permitting the collection, use or disclosure of personal information, and
5. The person received responses to his or her requests for additional information about those matters

IX. ***Part XI – Miscellaneous Matters***

Review of First Nations, Inuit and Métis

36. Amend section 315 to include the following:

Every Review should include First Nations, Inuit and Métis Issues and African Canadian Issues

Include reporting and review requirement where the Minister has found that certain populations of children and young people are overrepresented shall make information available to the public, in plain language, and be accessible to youth.

Have similar provision for:

a) ….. evaluating progress made with African Canadian peoples …..

b) Review of Anti Black Racism efforts and initiatives with a view towards compliance by societies to provide service in a manner that works towards diminishing over – representation. Systemic racism, systemic biases and the barriers it creates for children and families receiving services and how they continue to be addressed must be reported and reviewed to inform the delivery of all services for children and families.

Anti-Oppression Coordinator

37. Include amendment that would require an Anti-Oppression Coordinator within each CAS in the Province. The Anti-Oppression Co-coordinator would evaluate the societies' policies and services and report to CAS Boards of Directors and the Ministry through the Regional Director.

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