Child Capacity and Participation in Child Welfare & Adoptions

The Society for Children and Youth of BC

SOCIETY FOR children and youth OF BC

RC&Y Representative for Children & Youth

Child Welfare

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The Society for Children and Youth of BC would like to acknowledge that we live and work on the traditional territories of the First Nations peoples of British Columbia. Our office is located on the Unceded Territory of the xʷməθkwəy̓əm (Musqueam), sḵwx̱wú7mesh (Squamish) and səl̓ilwətaʔɬ (Tsleil-Waututh) First Nations. We express our sincerest gratitude to the custodians of these lands and beyond across BC. We also wish to recognize the specific impacts on Indigenous Peoples and communities that are a result of the systems that are the focus of these papers. We invite readers to critically engage with the themes and key findings presented using this lens as well as an intersectional approach to take action.

Finally, we would like to acknowledge the invaluable contribution of the Office of the Representative for Children and Youth in facilitating this research. Their expertise, insights, and guidance throughout the research process were instrumental in shaping this work.

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About The Society for Children and Youth of BC

The Society for Children and Youth of BC (SCY) is a provincial not-for-profit charity. Since 1974, the Society has focused on providing a strong voice representing children and youth. Our mission is to improve the well-being and resilience of children and youth in BC through the advancement of their civic, political, economic, social, cultural and legal rights. Using the UN Convention on the Rights of the Child as a foundation, SCY has a track record of creating and delivering programs that have motivated change in research, legislation, policy, and practice in Canada. This year, we proudly celebrate 50 years of advocacy for child and youth rights. The organization is comprised of three programming areas: The Child and Youth Legal Centre, Child and Youth Friendly Communities, and Child Rights Public Awareness.

The Child and Youth Legal Centre (CYLC), established in 2017, provides free support to young people experiencing issues related to Family Law, Child Protection, human rights violations, and other legal matters. The Legal Centre is made up of Lawyers, Intake Workers, Child and Youth Advocates and a Social Worker. The Legal Centre has seen significant growth since its inception, and in 2023 supported 1125 young people across 90+ Communities in British Columbia.

SCY's Child and Youth Friendly Communities (CYFC) program supports child-friendly community-building with young people. Over the past eight years we have worked in collaboration with various Metro Vancouver municipal planning teams to ensure that children and youth have a stronger voice in their community's planning initiatives. Our aim is to ensure that public engagement is a deep and meaningful experience for

young people. Some of our projects include the Walking School Bus, School Streets, Play Streets, and Urban Explorers.

The Child Rights Public Awareness Campaign began in 2006 when SCY, the Representative for Children and Youth, and the Institute for Safe Schools of BC came together to envision a plan for raising awareness of child rights. Throughout the years, the campaign has engaged in numerous activities including roundtables on children's rights, the creation of a child rights network, a multimedia campaign, community and youth engagement activities, and the development and dissemination of child rights resources across the province, including multilingual resources.

Drawing from our experiences over the past several decades across different sectors advocating for child and youth rights, SCY conducted a Child Capacity Research Project as commissioned by the Representative for Children and Youth of B.C. This work aims to highlight the importance of child participation rights by way of research papers on child capacity in the context of four key areas: 1) family law, 2) child welfare and adoptions, 3) decisions about healthcare, and 4) mental health and involuntary civil detention. We are pleased to present this report series as it reflects a culmination of comprehensive literature analysis and multi-faceted youth engagement specific to each area. It is our hope that the key findings identified within each paper will support systemic action and facilitate cross-sectoral collaboration within B.C.

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Child Capacity and Participation in Child Welfare & Adoptions

Society for Children and Youth of BC
Suzette Narbonne
Mina Macdonald

> **"I made it my life mission to advocate so what happened to me wouldn't happen to other children and families.**
>
> Youth Engagement

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A. Executive Summary

This paper is part of a series on the topic of child capacity in relation to child participation rights. Throughout this collection of papers, we focus on the following areas: a broader socio-legal discussion on child capacity; family law; child welfare and adoptions; mental health and involuntary civil detention; and decisions about health care.

The key findings come from a review of the literature, legal analysis, and youth engagement. The youth engagement included surveys, interviews, and listening circles with children and youth who spoke about their experiences in the child welfare system. The Society for Children and Youth of BC want to acknowledge the thoughtful young people who spoke candidly about their often-traumatic experiences in the child welfare system. Those voices are critical to the research and key findings.

Key Findings

1. All children have the legal right to be heard when decisions are being made about them in child welfare and in adoption matters.
2. There is no universal test for capacity. All children should be presumed to have the capacity to express their views and preferences.
3. A child's best interests and their right to be heard are directly linked. Child participation is a necessary part of protecting children.
4. Children should be provided with independent representatives to represent the children's views in child welfare proceedings. There should be codes of conduct for those representatives to ensure their independence.
5. Age alone should not be determinative of whether a child's views are included in legal proceedings that affect them.
6. Interviewers should be trained in best practices in hearing from children. They should ensure that children have the tools to understand the decisions that are being made and how they can be active participants.
7. Children should be afforded access to independent professionals who are qualified to counsel them on the effects of adoption and ensure that any consents to adoptions are properly informed. Reports of the child's views on adoption should be prepared by independent professionals, not commissioned by prospective adoptive parents.
8. Indigenous children continue to be disproportionately represented in the child welfare system. Their meaningful inclusion in decisions affecting them must address this systemic issue.

B. Background and purpose of report

The purpose of this paper is to discuss capacity and child participation rights in child welfare and adoption proceedings in British Columbia. The history of child protection and its impact on vulnerable populations provides a backdrop to the current state of the law in British Columbia.

This paper is part of a larger research project exploring the interplay between child capacity and child participation in legal proceedings in Canada with a focus on the experience of children in British Columbia. Capacity and participation are considered through the lens of the United Nations Convention on the Rights of the Child (UNCRC) (1989), to which Canada is a signatory, and the Canadian Charter of Rights and Freedoms.

C. Discussion

Part I: Child Protection

> *"When I was taken out of home into foster care, I wish I had the capacity to say bye to my mom. They came to school and took my phone away. It was very traumatic. I think that was one of the things that needed to be changed. Children no matter how old they are should have the right to say goodbye."*
>
> —— Youth Engagement

Few state actions can have a more profound effect on the lives of both parents and children than the removal of the child from parental custody (*New Brunswick (Minister of Health and Community Services) v. G. (J.)* (1999)). Children are often removed from their homes with no notice, placed in the care of strangers, and allowed to see their parents only in accordance with either agreements that their parents make with social workers or through court ordered access. In too many cases, children will spend many years bouncing back and forth between their family home and different foster and group homes until a final decision is made. They may interact with dozens of different social workers through their time in the child welfare system.

> *"I was in and out of care up until I was 9 then was taken away permanently. I had to go to court at age 12 to give the judge my decision about where I wanted to live. I was asked where I wanted to live. I gave the address of my mum and dad obviously. They asked if that doesn't work where else would I want to go. I gave my grandparents and aunties and uncles' addresses. Then they asked again well if those don't work out where would you want to live? My last answer was I would choose care. There was nowhere else I could go."*
>
> *"I have had 28 social workers in total. That's not enough consistency-whether in youth justice or foster care or something happening with government. There's no consistency with what's happened in children's lives... Abandonment is already an issue for youth in care. What makes you think we want more?"*
>
> —— Youth Engagement

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Elling (2010) notes that children in Canada's child welfare systems are some of our most vulnerable citizens. They cannot vote. They have little to no power to influence political decisions. Legislation ensures parents have participatory rights that children do not have. "Historically, parental rights have a long history of superseding the rights of the child. This trend has continued through the systematic failure of child protection agencies to build into their structures mechanisms which allow children to make informed, cogent decisions[..]" (Elling, 2010, p. 6).

There is a clear power imbalance, "with a powerful state agency dealing with individuals who often have limited resources and who are socially marginalized" (Bala & Leckey, 2013). In a 1999 decision, the Supreme Court of Canada found that both a child's and a parent's s.7 Charter right to life, liberty and security of the person are at stake in child welfare proceedings. In that case, the Court confirmed that "[w]hen government action triggers a hearing in which the interests protected by s.7 of the Canadian Charter of Rights and Freedoms are engaged, it is under an obligation to do whatever is required to ensure that the hearing be fair" (*New Brunswick (Minister of Health and Community Services) v. G.(J.),* 1999, para. 2; Bala and Leckey 2013).

Throughout our youth engagement, one consistent theme was that children had little to no power to influence decisions that were made about them. While some of them had the opportunity to have legal representation or to speak to the court, they reported that they didn't have sufficient knowledge about what, if any, options they had. They found themselves at the mercy of a system that was too busy to listen to the individual child.

> *"I didn't feel heard at all by MCFD (the Ministry of Children and Family Development). For whatever reason, the child isn't really listened to or believed. Social workers told me I was lying or making stuff up. My dad knew how to be charismatic. He fooled the system. Everything I was saying didn't matter. I think I was seen as not capable or incompetent... If [MCFD] had done their job, maybe my life would be different."*
>
> — Youth Engagement

A Child's Right to be Heard

> *"If you want people to have capacity over their own lives, they need to have autonomy... kids don't belong to their parents; they're their own people. I don't think this message gets passed along to kids in care."*
>
> ——— Youth Engagement

All children have rights, separate from those of their guardians and caregivers. In child protection proceedings, however, a child's right to be heard and to be taken seriously can be muted by the concern of the state for the wellbeing of the child. James et al., note "the 'cared for' may often find themselves at the mercy of the 'carers' who control them, a process often leading to the denial of citizenship rights through social exclusion" (as cited in Elling, 2010, p. 6).

United Nations Convention on the Rights of the Child

Article 12 of the UNCRC (1989) asserts a child's right to express their views freely in "all matters affecting the child," with those views being given due weight. "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child" (Article 12(2)).

The UN Committee on the Rights of the Child (2011) noted that "barriers to participation are faced by particularly marginalized and/or discriminated groups. Addressing these barriers is especially relevant for child protection as such children are often among those most affected by violence" (General Comment 13, para. 63).

> [c]hild participation promotes protection and child protection is key to participation. The child's right to be heard commences already with very young children who are particularly vulnerable to violence. Children's views must be invited and given due weight as a mandatory step at every point in a child protection process (General Comment 13, 2011, para. 63).

A child's best interests under Article 3 and their right to be heard and to be taken seriously under article 12 are inextricably linked:

> The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives (General Comment 14, 2013, para. 43).

As the UN Committee on the Rights of a Child reminds us, all children have these rights, even very young children. It is incumbent on States to ensure that there

are appropriate arrangements to assess a child's best interests, even when they are not able or not willing to express a view (General Comment 14, 2013).

It is against this backdrop that we should consider our child protection system's ability to promote and advance the participation rights of children and the role that capacity plays in the advancement of those rights.

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The Child Protection System

Different models of child welfare influence attitudes towards children and youth's expressions of capacity and participation. At one end of the continuum are "protectionist thinkers" who feel that adults are best placed to determine a child's best interests and, at the other end, are "liberationists" who believe that children are "able to determine their own 'best interests' and have the same rights as adults" (Bandman, 1999, p. 24 as cited in Elling).

These different models underpin legislation across Canada's provinces and internationally, so examining these models can help us better understand the attitudes and beliefs that determine the degree to which a young person may have their capacity respected in child welfare proceedings.

a) Protectionist —

A protectionist model of child welfare emphasizes the safety and security of the child. It is conservative, with a negative view of the child's ability to advocate for themselves. The emphasis is on the child's developmental capacity to understand (or not) their own needs for safety and security. This "risk management model" gives "adult professionals, kin and community an obligation to intervene for the safety of the child" (Elling, 2010, p. 9). In this model, "the child is seen more as an object rather than the subject of rights" (Elling, 2010, p. 13 citing John, 1996, p. 8).

b) Family preservationist —

With its emphasis on family and a belief that a child's rights are secondary to those of their family, this model is deemed "inherently protectionist" (Elling, 2010, p. 9-10). A family preservationist model supports the idea that adults know that what is best for the child is for the child to be kept in the family to preserve the best interests of the family unit (Elling, 2010, citing Alstein & McRoy, 2000). This model assumes that the child wants to belong to family. It does not address situations where the child has views that differ from those of the decision makers.

c) Community preservationist —

The foundation of this protectionist model is the belief that adult community leaders and the family unit understand the best interests of the child. Elling notes that this model is based on a consideration of the child's best interests, those of the family and the community, and on what will preserve culture (Elling, 2010, citing Walmsley, 2009). This child welfare model is most often seen in First Nations child welfare models but also in other "cultural, linguistic or religious groups" such as Francophone or Hassidic Jewish communities (Elling, 2010, p. 10). Issues arise when cultural practices violate children's rights. According to Sinclar et al (2004) and Lynch (2001) "First Nations world views tend to look at the interdependence of the needs of the child and the community, therefore considering both 'the rights of the Indigenous child to his or her community rather than the rights of that community to the child'" (as cited in Elling, 2010, p. 10).

Elling (2010) notes that this community preservationist model “leans more towards a liberationist view of children, although it is undermined by ambiguities and problems arising from concerns with a children’s autonomous rights. After all what constitutes the definition of a community is generally defined by adults” (p.10). As stated by Lynch (2001): “...[T]he dangers of using the ‘best interests of the community’ to inform ‘the best interests of the child’...include: the obvious physical, emotional, and psychological dangers of leaving a child in a potentially abusive environment; the danger of ‘freezing’ culture and community; the danger of elevating collective rights at the expense of denying individual rights; the danger to First Nations and Aboriginal communities of submitting their interests to the definitional power of courts; the danger of removing a child from the family to which s/he is bonded and comfortable; the danger of imposing an identity on the child when the very role of rights and ‘the best interests of the child’ is to make space for people(s), particularly children to conceive of and create their own identities” (p. 506).

d) Liberationist —

With its emphasis on children as individuals “that can interact in their own care to varying degrees depending on their developmental capacity” (Elling, 2010, p. 11), under a liberationist model, children are seen as able to independently advocate for themselves if their skills are developed and they are educated about their rights (Elling, 2010, citing Bandman, 1999, and Mitchell, 2005.) Children are considered to be independent and full state citizens, with the same rights as adults. The liberationist view disagrees with the idea of childhood as an “incomplete state” and focuses on engaging children as “fully participatory members of society not as adults ‘in becoming’” (Elling, 2010, p. 11 citing Finlay, 2006, p. 1). As Elling (2010) notes, there are “problems with this model for children who are: very young, experience developmental or learning delays, living with mental illness, or who are newcomers or have linguistic or legal barriers—i.e., those who are not citizens. Also some children may not want this kind of liberty and may feel safer if family or adults are in control of their rights” (p. 11).

At essence, the goal of child welfare is to keep children safe and to ensure that decisions are made that are in their best interests. Yet throughout our engagement we heard from many young people who reported feeling failed by the very system that was designed to protect them.

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Participation and Capacity

> "In foster care I didn't want to be at my placement, there were bad things going on, it was toxic. I asked to be moved to a different placement and every time I asked my social worker to move, I was told that I had no capacity, that me asking was evidence that I didn't have capacity."
>
> "I would ask a question and because I asked, I was told that I have no capacity. I had no say in how I was perceived. Every time that I tried to say anything it was flipped against me. Capacity was a weapon used against me."
>
> — Youth Engagement

A child's right to participate is most often dictated by the biases of the adult gatekeepers. Although research reflects that young children are often as rational as adults in their reasons for decision-making in family law situations, arbitrary age barriers still determine the child's participation (see Daly, 2020, citing Greenberg Garrison, 1991). Younger, or neurodiverse children may be excluded because of erroneous presumptions about capacity. Daly (2020) notes that "[c]apacity is the point on which many children's rights and responsibilities turn" (p. 472). She argues that the UNCRC "represents the 'hard-won consensus of the global community' (Daly, 2020, p. 472, citing Lundy, 2007, p. 933) and should therefore be at the forefront of law and practice concerning children, particularly in areas as ill-understood, contested and fundamental to the exercise of rights as capacity" (Daly, 2020, p. 472-473).

Daly describes Article 5 of the UNCRC as "groundbreaking" in its positioning parents as "holders in trust of children's rights" (2020, p. 479). She explains that as the child matures and develops the ability to exercise rights on their own behalf, "Article 5 then 'transforms the role of the parent from primary rights-holder over their child, to duty-bearer to their child in the child's exercise of her rights under the UNCRC'" (2020, p. 480, citing Varadan, 2019, p. 320). Daly (2020) concludes that "children themselves have 'capacity rights' under Article 5..." (p. 480).

Article 12 of the UNCRC assures to children the right to be heard. Daly (2020) argues that even very young children can form views and express their wishes. Children must be informed of their right to be heard and adults must "'show patience and creativity by adapting their expectations to a young child's interests, level of understanding and preferred ways of communication'...Even children who clearly do not have capacity can potentially provide views through communication such as play or art" (Daly, 2020, p. 483).

Capacity is "highly dependent on the environment in which an individual is operating, and particularly whether they are receiving support to maximize capacity" (Daly, 2020, p.488). It is essential, therefore, that adults provide the appropriate support and information to children to maximize the child's capacities (Daly, 2020).

> “For me personally, I need things written down. [MCFD] has to do that anyway so I was confused why they couldn’t just do that? There was never an opportunity for them to ask me if I understand, especially if it was a big decision. There was no, like, ‘maybe she doesn’t understand’, it was just ‘no she doesn’t understand so she doesn’t have capacity’”
>
> — Youth Engagement

> “You have to think about neurodivergence. I’m gonna say the majority of kids in care are neurodivergent. So we have to be like how do we work with this kid and how their brain works? MCFD, do you realize youth have all these challenges? There’s a reason they are in your care.“
>
> — Youth Engagement

Rather than a test for a child’s capacity, Daly (2020) points to Alderson’s suggestion that a test should be required to determine whether practitioners understand children’s competence and how to enhance it.

Alderson (1994) suggests that the test should measure whether a professional is able to “understand all the relevant information, to retain and explain all the issues clearly and resolve misunderstandings, to assist children and parents in their reasoned choice making, and to respect their decisions, putting no undue pressures on them” (as cited by Daly, 2020, p. 490).

Jackson and Martinson (2020) maintain that legal representation for children in all court matters is essential to a child’s right to a fair trial and to due process. “The right to legal representation is considered to be implicit in Article 12 of the CRC. The underlying rationale is that, as the Supreme Court of Canada stated in *Michel v. Graydon* at para. 96, child rights are meaningless without accessible means of enforcing them” (pp. 5-6, citing Martinson & Jackson, 2019 at pp. 59-61; Tempesta, 2019 at pp. 10-14; Bauman, 2017 at para. 22; Appendix B). They do not make an exception based on the ‘capacity’ of a child.

Nowhere in the child protection legislation in British Columbia is a child’s participatory right linked with capacity; nonetheless, their voices can be silenced because of fears that they do not have the capacity to participate in these hearings that may profoundly alter their lives. “Without an effective and accessible means of enforcing rights, the rule of law is threatened” (*Hryniak v. Mauldin*, 2014, para. 1).

While there are differing views as to whether a child has a right to counsel in child protection hearings, the legal scholarship is consistent in stating that children have a right to be heard and to be taken seriously in child welfare matters (see Jackson and Martinson, 2020).

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Why we should hear from children

The Supreme Court of Canada noted that “with our evolving understanding has come the recognition that the quality of decision making about a child is enhanced by input from that child” (*AC v Manitoba (Director of Child and Family Services)*, 2009, para. 92).

In the case of *B.J.G. v. D.L.G.* (2010) the Supreme Court of Yukon court explained that encouraging child participation in family law is critical to their well-being:

> When children are actively involved in problem solving and given recognition that their ideas are important and are being heard, they are empowered and their confidence and self-esteem grow. They feel that they have been treated with dignity. In addition, children’s participation in the decision-making process correlates positively with their ability to adapt to a newly reconfigured family (para. 22).

In 2007, the Standing Senate Committee on Human Rights called upon provincial and territorial governments across Canada to examine their legislation with respect to the child’s right to be heard and to foster young people’s input into the child protection system. “In order to comply with the Convention on the Rights of the Child their voices need to be heard, and their wishes and best interests at the very least considered. Children can recognize their responsibilities within the child protection system only if they feel that they have ownership over their own lives” (Standing Senate Committee on Human Rights, 2007, p. 102).

In their study respecting child participation in child protection proceedings, Mona Paré and Émilie De Bellefeuille noted:

> Caseworkers linked child participation with a healing process, improved resilience, a sense of pride, finding relief, a release from secrecy, and being able to move on. One caseworker affirmed that even young children’s opinions mean a lot for their fulfilment and emotional development. Some children also talked about the empowering effect of participation,as this gave them a sense of control and allowed them to name their experiences and emotions. Participation, in the sense of being heard, can thus be empowering and liberating for children. It can improve their confidence and help them progress in their situation (Paré and De Bellefeuille, 2021, p. 142-143).

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The over-representation of Indigenous children

Jackson and Martinson (2020) note that there is little literature that specifically addresses legal participation for Indigenous children and other minority groups. "At most, the literature looks at deficiencies that exist within child protection regimes overall and its impacts on Indigenous children who are overrepresented in the system - but does not go further in discussing the role of children's *participation* in these systems" (p. 13, citing Cleland, 2016; John, 2016).

Studies consistently reveal that Indigenous children have been and continue to be disproportionally represented in the child welfare system. "First Nations children are three to four times more likely to be reported for a child maltreatment-related concern. This initial disparity increases further as various investigation decisions are made, with investigations involving First Nations children being seventeen times more likely to lead to placement in formal out-of-home care" (Fallon et. al, 2021, p. 3).

Fallon et. al (2021) explain that "the overrepresentation of First Nations children investigated by Canadian child welfare is a consequence of centuries of policies of assimilation, structural inequities, and discrimination that limit the resources needed for First Nations families and communities to thrive" (p. 6).

The authors note that this overrepresentation of First Nations children in the child welfare system, "did not stop at the end of the Sixties Scoop era—rather, it has continued to grow and evolve" (Fallon et. al, 2021, p. 15).

Legislative changes, such as *An Act respecting First Nations, Inuit and Metis children, youth and families* (2019) have acknowledged Indigenous populations' jurisdiction over child and family services, however the legislation has been criticized for its significant limitations and lack of consultation before implementation (Fallon et. al, 2021).

In 2019, British Columbia passed the *Declaration on the Rights of Indigenous Peoples* (UNDRIP) into law. There are four key areas of the legislation:

- S. 3 mandates the government to bring provincial laws into alignment with the UN Declaration,
- S.4 requires the Province to develop and implement an action plan, in consultation and cooperation with Indigenous Peoples, to meet the objectives of the UN Declaration,
- S. 5 requires regular reporting to the legislature to monitor progress on the alignment of laws and implementation of the action plan, including tabling annual reports by June 30 of each year, and
- S. 6 and S 7 allow for flexibility for the Province to enter into agreements with a broader range of Indigenous governments and to exercise statutory decision-making authority together.

As of June 2024, there are 53 notices of the intent by Indigenous governing bodies to assert inherent jurisdiction over child and family services throughout Canada, and 12 Indigenous child and family laws currently in force.

Each of the Indigenous laws that is in force is unique to the culture, language, legal system, and territory of the Indigenous group, community, or people. Despite this diversity, many Indigenous laws for child and family services share a thoughtful inclusion of child and youth participation in child welfare and family law processes. The following examples illustrate this commonality within the framework of each distinct group.

The Algonquins of Pikwakanagan First Nation's *Nigig Nibi Ki-win* (2024) emphasizes child and youth participation. To ensure that every Niinidjànis (child) or Weshkinìgidj (youth) has their voice heard, the law is interpreted and administered to uphold this principle whenever possible (*Nigig Nibi Ki-win*, 2024). The Family Circle replaces the settler concept of a court and addresses safety concerns and issues regarding the physical, emotional, psychological, spiritual, and cultural well-being of a Niinidjànis or Weshkinìgidj (*Nigig Nibi Ki-win*, 2024). The presumption is that the Niinidjànis or Weshkinìgidj participates as a member of their Family Circle, engaging in discussions about their care, residence changes, services, supports, programs, and steps to keep the Wendjibàdj (family) together (*Nigig Nibi Ki-win*, 2024). The Family Circle assesses the child's decision-making capacity and includes parents, grandparents, Kanawàdàwasowin (guardians if other than parents), and community members involved in the child's care and well-being (*Nigig Nibi Ki-win*, 2024). All participants directly affected by a decision, including the child, must consent to the final decision (*Nigig Nibi Ki-win*, 2024). If a consensus cannot be reached, a Healing Circle is convened, bringing in at least two elders from the Algonquins of Pikwakanagan First Nation (*Nigig Nibi Ki-win*, 2024). Decisions made by the Healing Circle must be unanimous, with an emphasis on the child's voice, opinion, and consent.

The *Peguis First Nation's Honouring Our Children, Families and Nation Act* (2022) is designed to include children and youth in the family law and child welfare scheme. The Family Sharing Circle and the Community Circle of Care are collaborative processes designed to address child protection and prevention challenges as alternatives to traditional court proceedings. Both approaches emphasize the active involvement of the child or youth, allowing them to participate in decision-making about their circumstances. Families—including the child or young person— participate at all stages of the process and work together with guidance from a coordinator who ensures the child is being heard (*Peguis First Nation Honouring Our Children, Families and Nation Act,* 2022). Confidentiality within these circles promotes open communication, allowing families to develop and finalize care plans. The Elders Council and Agency then review these plans to ensure they align with the child's best interests.

Finally, the *Snowoyelth Te Emi:Melh Te Sts'ailes* (Child and Family Services Law) (2023) of the Sts'ailes First Nation demonstrates how a governing body can directly enter into agreements independently with youth, defined as individuals 13 years or older. The Youth Agreements process models a high level of youth participation, ensuring their active involvement in decisions about their care and support. The Snowoyelth Department can enter into written agreements with youth living independently, providing them with essential services directly, such as housing, education, and financial support (*Snowoyelth Te Emi:Melh Te Sts'ailes,* 2023). These agreements are developed through Family Planning Meetings, where the youth collaborate with the department to create a Cultural Safety and Support Plan tailored to their needs and goals (*Snowoyelth Te Emi:Melh Te Sts'ailes,* 2023). This inclusive approach gives youth real agency in their future.

In *J.W. v. British Columbia (Director of Child, Family and Community Service)*, the Court was tasked with determining how best to hear from an Indigenous child in a child protection case. Justice Walkem found that before making any such decision, it would be "useful to have guidance from the Indigenous Nation itself as to how the voice of the child is heard according to their laws and traditions, and to ensure that is reflected in any order" (2023, para. 117).

The earliest Indigenous laws on child and family services recognized under the Act came into force in 2021. Given the recent acknowledgment of these laws by settler systems, there is a lack of information or testimonies from those who have interacted with them. A significant concern is the absence of a commitment to core funding necessary to support Indigenous child welfare laws and their social infrastructure. Without predictable funding, the promising inclusion of children and youth in Indigenous child and family services laws risks not fully materializing.

Children with disabilities

Studies indicate that children and youth with disabilities are also overrepresented among those in child protection proceedings (Fuchs et al, 2007 citing Fudge Schormans & Brown, 2006; Sullivan & Knutson, 2000). "Whatever the reasons for the over-representation of children with disabilities among those who are abused and/or

neglected, their particular vulnerability is a critical child welfare issue" (Fuchs et. al, 2007, p. 127). In their study, Fuchs et. al conclude that "the child welfare system is not well structured to serve children with disabilities and their families" (p.141).

The importance of hearing from these most vulnerable young people cannot be overstated.

Models of Child Protection in Canada:

Child Protection in British Columbia

In British Columbia, the *Child, Family and Community Service Act (CFCSA)* (1996) governs child protection proceedings. The process starts when a social worker receives a report of child abuse or neglect. S. 13(1) of the CFCSA (1996) defines the conditions under which a child requires protection. These include when a child "has been, or is likely to be" physically, sexually, or emotionally harmed or neglected by their parent, as well as if the child is living in an environment where domestic violence is occurring by or toward their parent, the child is medically neglected, the child is abandoned, or any other circumstance in which the child's parent is unable or unwilling to provide the necessary care and safety for the child.

The Ministry of Children and Family Development (MCFD) then screens the report to determine whether it meets the definition of a child requiring protection according to s. 13(1) of the *CFCSA* (1996). A report that is "screened in", is then investigated by a child safety

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social worker. If the outcome of that investigation is that the child or youth requires ongoing protection, then an application for a court order may be made or the guardians may enter a voluntary agreement.

As part of the investigation, the social worker is expected to speak with the children. The interview is not recorded. There is no requirement to solicit the children's views as to what outcomes they would prefer; instead, the social worker's job is to determine whether the information is true and, if so, whether the child needs protection.

The director can apply for a variety of court orders. Supervision orders allow the child to remain in the care of their primary caregiver under MCFD supervision. They can also include third party supervision orders where the child is placed in the care of a family member or friend. Other orders include temporary care and custody orders, or continuous care and custody orders. When a child is ordered into the temporary care or continuous care of MCFD, the child will stay in foster care for the duration of the order, unless an order of adoption is made following a continuing custody order.

There are time limits to the temporary orders depending on the age of the child and the length of time the child has already been in the care of the Director.

The *CFCSA* (1996) is to be interpreted in a manner that considers the best interests of the child. The legislative scheme in British Columbia, however, is fraught with instances where the child's rights are simply ignored. Children whose most fundamental freedoms are in jeopardy do not have the right to participate in a hearing under the *CFCSA* (1996) regardless of their age or ability.

In British Columbia, the Director of Child, Family and Community Services may provide independent counsel to a child whose child protection case is before the courts. The Director does not generally provide independent legal counsel to the child in the litigation unless the child has attained the age of 12 and has been added as a party to the legal proceedings by court order.

In *Director and Child Family Community Service v. A.A.K. and A.C.K* (2015, unreported) Judge Church noted:

> [13] A person who requires the status of a party under the Act is entitled to notice of every hearing; is entitled to be heard and call witnesses at the hearing; may apply to rescind an order under s.54; has the right to attend a case conference; is entitled to disclosure of the records in the possession of the Director; is entitled to apply for defined access, and their consent must be obtained if a consent order is to be valid.
>
> [14] Section 39(4) gives the court additional discretion at "any hearing" to order a person to be a party. This discretion, according to the scheme of the whole section, should only be used sparingly and, I conclude, only if the matter before the court demands it for the proper resolution of the issues under consideration. (as cited in *British Columbia (Director of Child, Family and Community Service) v. G.M.B.* (2016) at para 29).

Judge Church dismissed the application that the 12-year-old child be made a party.

In a subsequent case, the provincial court relied on this decision in declining to add three children, ages 17, 15 and 13 as parties to the child protection proceedings (*British Columbia (Director of Child, Family and Community Services) v. G.M.B.* (2016)).

Barrett (2016) notes,

> Children who are 12 years of age or over, and who are entitled to notice and/or service of proceedings under the CFCSA, do not have party status in proceedings under the CFCSA unless they are specifically made parties by court order (see.ss.39, 49(4) and 54.01(4)). Although courts have, under s.39(4) of the CFCSA, the legislative authority to make a child a party to a legal proceeding relating to that child, courts have been extremely reluctant to do so (p.6).

Jackson and Martinson (2020) explain that the current legislation in the *CFCSA* allows children's views to be incorporated in child protection proceedings, "especially those of Indigenous children who are overrepresented in the system" (p. 3). The authors assert that the best way to ensure meaningful participation for the child is by providing legal representation to that child (citing John, 2016). The reality in British Columbia, however, is that the appointment of counsel for the child in child protection proceedings is still the exception rather than the rule.

The Guiding Principles of the *CFCSA* require:

> s. 2 This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:
>
> (d) The child's views should be taken into account when decisions relating to a child are made.

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S. 4(1)(f) of the *CFCSA* states that where there is a reference to the child's best interests in the legislation, the child's views *must be considered* (emphasis added). This requirement is consistent with Canada's obligations under the UNCRC. In practice, however, children's views are rarely provided to the court, except through the social worker who is often the person instructing counsel for the Director. The social worker, who is employed by the state, can and often will disagree with the child's views and preferences. Children are seldom consulted as to what they would like the social worker to share with the court; indeed, more often they are unaware that anything they say may be summarized and interpreted for the court. The social workers will often evaluate the child's views and provide the social worker's perspective on those views.

The UN Committee on the Rights of the Child cautions that while a representative of the child's views can be the parents, a lawyer or another person such as a social worker, there is a real risk of a conflict of interest between the child and their most obvious representative such as their guardian. Accordingly, the child should choose if and how their views are to be conveyed correctly to the decision maker. The representative of the child's views "must be aware that she or he represents <u>exclusively the interests of the child and not the interests of other persons</u>" (General Comment No. 12, 2009, para. 37, emphasis added). The Committee recommends that "[c]odes of conduct should be developed for representatives who are appointed to represent the child's views" (General Comment 12, paras. 37).

In British Columbia, the government provides free, independent views of the child reports in family law. Unlike the *Family Law Act* (2011), however, there is no legislated provision in the *CFCSA* for voice of the child reports or other reports that might provide a non-evaluative record of the child's views. There is no ability for the child to access the free services of a family justice counsellor to assist the child in sharing their views. Often their "views" are provided to the court by a party who is seeking a specific outcome. The practice in British Columbia of allowing a social worker who is an employee of a party to the litigation to testify to the child's views is not consistent with a child's right approach.

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> *"MCFD is supposed to be objective. Sometimes people are not truthful, but this is rare. I think for me they came in and quickly became biased after speaking with my parents and decided that I was in the wrong. For a 10-year-old to be in the wrong, for an adolescent to be consistently wrong, that's not right."*
>
> — Youth Engagement

There are many other instances where a child's rights can be undermined by the legislation.

Under s. 59 of the *CFCSA*, a child can be compelled to undergo a medical, psychiatric, or other examination if the court considers the examination is likely to assist the court in making any determinations or orders respecting the protection of the child.

Protective intervention orders under s. 28 of the Act can prohibit contact between the child and another individual. A child who has attained the age of 12 is entitled to notice of this application however they do not have a right to participate in the hearing. There is no requirement to notify a child who is 11 or younger.

Children can be excluded from the courtroom. (s. 67 *CFCSA*) This is notwithstanding s.3(1) of the *Provincial Court Act* (1996) which says, "proceedings before the court that deal with family or children's matters must be open to the public".

The child has no participatory rights to challenge any of these orders. Many orders are made without notice to the child at all.

The hearsay evidence of the child is subject to reliability assessments by the decision maker. The child does not have a right to have an advocate appear on their behalf to support or oppose the admissibility of this hearsay evidence. They may not even know what is being attributed to them as their "views".

Without a mechanism that ensures a child's ability to participate in the child protection hearing, the child can be silenced, notwithstanding the Guiding Principles that require the child's views to be considered in any assessment of their best interests.

In the case of *Children's Aid Society of Toronto v. E.U.* (2014), a child who was in government care wished to have her views considered when any order was made respecting her access to her parents. The Court noted that "Article 12 provides that children should be given the opportunity to express their views and that their right to be heard includes the ability to provide those views to a decision-making body. That right allows children, who have to live with the decisions made by others, the ability to share their concerns about the impact of those decision on their lives" (para. 262). In that Ontario decision, the child's views were taken into consideration in determining what, if any, access she would have to her parents after a permanent order was made in a protection hearing.

While children's views are often ignored or overlooked when decisions are being made about them in the child welfare system, there have been some positive developments in British Columbia that have allowed even very young children to be heard in the child protection proceedings.

In *British Columbia (Director of Child, Family and Community Services) v. K.J.B. and M.S.* (2023), counsel from the Child and Youth Legal Centre, a not-for-profit organization that provides free legal advice and representation to young people, was appointed for the 8-year-old child, who was not a party, for her to express her views and preferences.

And in some instances, judges have chosen to invite the child to meet with them for a judicial interview to determine the child's views. These approaches are consistent with the child's right to be heard and with s. 67 of the *CFCSA* that allows the child's evidence to be admitted without the need for the child to testify.

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Other models of child welfare systems in Canada:

Except where an Indigenous nation has asserted their inherent jurisdiction over child protection, child protection is left to provincial and territorial governments. The result is that children's participatory rights in child protection proceedings vary widely between provinces and territories across Canada.

Each provincial and territorial act on child protection includes "the views of the child" (or some derivative) within their definition of "best interest of the child", but this commitment looks different in practice in each province or territory. Still, a preference for granting children 12 and older more substantive participatory rights than children under 12 is constant across Canada.

In British Columbia, Ontario, Alberta, Manitoba, Nova Scotia, Newfoundland and Labrador, the Yukon, Nunavut and the Northwest Territories, children 12 and older are entitled to receive notice of proceedings, including the time and place of any scheduled hearings (see: *CFCSA*, 1996; *Child, Youth and Family Services Act*, 2017; *Child Youth and Family Enhancement Act*, 2000; *The Child and Family Services Act,* 1985-86; *Children and Family Services Act,* 2000; *Children Youth and Families Act*, 2018; *Child and Family Services Act,* 1997). Quebec is the only Canadian province or territory that ensures notice is provided to children who are the subject of a proceeding regardless of their age (*Youth Protection Act,* 2017). In Saskatchewan, notice is provided to children at the Court's discretion where it is in the child's best interest (*Child and Family Services Act*, 1985-86). New Brunswick only requires notice be given to children 12 and older who are the subject of an application for transfer of guardianship (*Child and Youth Well-Being Act,* 2022).

Few Canadian provinces or territories grant children the right to be made a party to their proceeding. Quebec stands out by automatically granting party status to children of any age in all proceedings under its legislation (*Youth Protection Act,* P-34.1, s. 78). Similarly, Alberta ensures that children are parties to any supervision, guardianship, or secure services proceeding before the court (*Child Youth and Family Enhancement Act,* 2000, s. 111(2)). In Manitoba, children are entitled to be made parties to child protection proceedings about them, although they must be at least 12 years old (*The Child and Family Services Act,* 1985-86, s. 33). Nova Scotia also restricts party status based on age, permitting children 12 and older to apply for party status, and automatically granting this status to children 16 or older (*Children and Family Services Act,* 2000, s. 37(2)).

In contrast, all other provinces and territories either do not address or explicitly forbid children from seeking party status. Notably, Saskatchewan's child protection act states that despite a child receiving notice of a hearing and obtaining representation, "the child is not a party to the protection hearing" (*Child and Family Services Act,* 1985-86, s. 29(2)). In British Columbia, the *CFCSA* (1996) does not explicitly address the issue of party status for children or young people. However, under s. 39(4), the Court has the discretion to grant a child party status, stating: "the court may order that a person be a party at any hearing." This discretion is exercised sparingly, as noted earlier.

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Whether a child has the right to attend a child protection proceeding that they are the subject of is inconsistent across Canadian provinces and territories. In Saskatchewan and Prince Edward Island, the legislative presumption is that children and young people do not have the right to attend proceedings (*Child and Family Services Act,* 1985-86; *Child Protection Act,* 2000). This presumption can be displaced where the court determines that a child's presence would be in their best interest. In Ontario, Nunavut and the Northwest Territories the right to attend proceedings is reserved for children 12 and older, and the child can be excluded at the court's discretion (*Child, Youth and Family Services Act,* 2017; *Child and Family Services Act,* 1997). Manitoba requires the presence of children 12 or older at hearings unless a judge finds that the child's rights have been sufficiently explained by independent legal counsel, who also convey the child's views and preferences (*The Child and Family Services Act,* 1985-86, s. 33).

In contrast, British Columbia, Alberta, Quebec, and the Yukon grant children of any age the right to be present at proceedings, barring the court deciding that their presence would be prejudicial (*CFCSA*, 1996; *Child Youth and Family Enhancement Act,* 2000; *Youth Protection Act,* 2017; *Children Youth and Families Act,* 2018). Quebec's approach, in particular, warrants respect for its provision that a child can only be excluded if their assigned advocate remains at the hearing to represent them (*Youth Protection Act,* 2017, s. 84). This measure ensures that the child's perspective is present notwithstanding the child's absence from the potentially prejudicial information in the proceeding.

Age thresholds are consistently used across Canada to dictate children's participation. The result is that children under the stated age, often 12, are effectively silenced by legislation that affords them much fewer opportunities to be heard. This is inconsistent with the

UNCRC's view that biological age alone must not be determinative of participation.

Using age thresholds to determine children's access to participatory rights is inherently arbitrary and overlooks the individual maturity and capacity of each child. These blanket policies fail to recognize that children develop at different rates and that a younger child might be equally capable of articulating their views as an older peer. Such inflexible criteria can unjustly exclude younger children from participating in decisions that significantly impact their lives.

The prevailing "must be this tall to ride" approach in child welfare stands in contrast to principles of fundamental justice that place the evidentiary burden on the state rather than the individual, like the presumption of innocence. By universally presuming that children under 12 are incapable of understanding and participating, we unjustly burden younger children with the task of disproving their assumed incapacity before accessing their right to participate. In stark contrast, Quebec's approach, which presumes a child's ability to participate regardless of age, aligns more closely with principles of justice. It removes the burden from the child, allowing them to participate without having to prove their capability first. This shift recognizes that every child, regardless of age, deserves the opportunity to have their voice heard and respected in matters affecting their lives.

Another avenue for child and youth participation is through legal representation. In *Family and Children's Services of the Waterloo Region v. J.L.S.* (2018), an Ontario case, Justice Gordon, in appointing counsel to two children aged 11 and 13, noted that providing legal representation for a child helps balance a child's meaningful and true participation in legal proceedings with the desire to protect children from traumatic situations and information (at paras. 65-66).

Most child protection schemes in Canada address legal representation for children, but access varies by jurisdiction. Quebec leads with a comprehensive system where an advocate is assigned to every child involved in child protection matters (Youth Protection Act, 2017, s. 78). Quebec's legislation empowers tribunals to enforce compliance with this assignment, and the representation is publicly funded.

In Ontario, the Office of the Children's Lawyer provide publicly funded counsel for children. Legal representation is necessary in cases of disagreement over the child's placement, when the child is in society's care without parental representation, or when the child cannot attend the hearing (*Child, Youth and Family Services Act,* 2017, s. 78). The requirement that the child be legally represented in all of these circumstances can be waived if the court, considering the child's views and maturity, believes the child's interests are already adequately protected.

Manitoba judges have the authority to order legal representation for children of any age in child welfare proceedings, though the right to instruct legal counsel is reserved for children aged 12 and older who have the "capacity" to articulate their own views (*The Child and Family Services Act,* 1985-86, s. 34(3)). The legislation provides criteria

for the court to decide on assigning representation, similar to Ontario's approach, but does not address how the funding operates.

New Brunswick courts have broad authority under the child protection legislation to appoint counsel based on several factors, including the child's ability to express their views and whether these differ from the Minister's (*Child and Youth Well-Being Act,* 2022). In Prince Edward Island, courts can assign legal representation at the Director's expense, though no specific legislated criteria guide this decision (*Child Protection Act,* 2000).

Alberta allows children to request representation, with the court referring cases to a Child and Youth Advocate to appoint a lawyer. Where a lawyer is appointed, the court may order that the lawyer's costs be paid by the child, the child's guardian, a director, or divided among them, based on their financial means (*Child Youth and Family Enhancement Act,* 2000, s. 112). Nunavut and the Northwest Territories also use a financial means assessment, sometimes requiring the parents to pay the counsel's fees and expenses (*Child and Family Services Act,* 1997).

While Saskatchewan's child protection legislation does not address appointing representation for children, the Counsel for Children program operated by the Saskatchewan government specifically provides lawyers for children of all ages involved in proceedings under the child protection legislation. Similarly, British Columbia's *CFCSA* (1996) does not address legal counsel for children. Nonetheless, the Director of Child, Family, and Community Services can provide independent legal counsel to a child involved in a child protection case. As discussed above, according to their policy, this counsel is generally only provided if the child is 12 years or older and has been made a party to the legal proceedings by a court order.

In the Yukon, the Public Guardian and Trustee determines the need for separate legal representation for children, with costs covered by the government (*Child and Family Services Act*, s. 7).

See Appendix 1 for more information on children's participatory rights under child welfare legislation in each province and territory.

Other Models of Child Welfare Systems: Internationally

Berrick et. al. (2015) compared four different countries respecting the rights of children to be involved in the child protection welfare system. They noted that in Norway, children who are 7 and those who are younger and capable of forming their own opinions are entitled to receive information and to be given the opportunity to express their opinion before a decision is made. Children 12 and older shall be heard in cases of out-of-home placement with their views being given weight. At 15 children are parties to the case and may have counsel appointed to represent their interests.

In Finland, every child regardless of their age, and every part of child welfare decision-

making must include a child's expressed views. Children 12 and older have a legal position in the child welfare proceedings, with their opinions having the same weight as those of their guardians. Child protection workers must "ascertain children's involvement, and if necessary, direct children to secure legal aid to document their views and wishes and to express these in court" (Berrick et. al, 2015, p. 3).

In England, child protection workers must "ascertain children's wishes and feelings" regardless of their age and give those wishes "due consideration in light of the child's age and understanding" (Berrick et. al, 2015, p. 3). When there is a child welfare proceeding in process, the child is entitled to legal representation and a "children's guardian" who is an independent social worker to provide the court with the child's views (Berrick et. al, 2015, p. 3).

As in Canada, the US has different legislative schemes depending on the state.

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> *"I heard a social worker make comments like, 'in adoption— like ripping off a band-aid— best to get them placed ASAP'. But that's not my experience or my younger brother's experience. We need time to adjust. It's very intense for a young person."*
>
> Youth Engagement

Part II: Adoption

An adoption is a significant event in a child's life. It terminates the parental rights and obligations of biological parents in favour of adoptive parents. This transition can require children to adapt to new routines and expectations, as well as come to terms with a new identity.

As with child welfare, children's participation in adoption proceedings is largely determined by the prevailing views of adults as to a child's capacity to understand and engage in these processes. Legal frameworks and policies often reflect varying assumptions about children's abilities and balancing their right to be heard with presumptions of maturity based solely on age. Given the profound impact of adoption on a child's life, the UNCRC is clear about the need to involve children in adoption decisions. The recognition of children's evolving capacities is crucial in shaping how their voices are integrated into these decisions that will irrevocably alter their lives.

The same models that inform legislation on child welfare are prevalent in adoption legislation.

Garcia-Quiroga and Agoglia (2019) note that a key challenge identified by research on child participation in child welfare and adoption is finding the right balance between participation and protection. They explain that scholarly debates in childhood studies reveal two seemingly conflicting perspectives: one that views children as fundamentally vulnerable, prioritizing their safety and protection, and another that emphasizes children's agency and competence, advocating for their right to participate actively in decisions affecting their lives.

In high-conflict situations, the attitude towards children is often protectionist, emphasizing their safety and security, sometimes at the expense of their participation.

Adoption legislation tends to place a greater emphasis on children and young people's views and agency than child welfare laws. This focus is not surprising, as adoption typically occurs under less conflictual circumstances compared to the high-conflict nature of many family law and child welfare cases.

All adoption statutes in Canada acknowledge the relevance of a child's views in adoption

decisions. In some provinces, it is explicitly stated in the legislation that adoption orders must include the child's views on the proposed placement and adoption (see, for example, s. 7(4) of the Northwest Territories, *Adoption Act,* 1998).

Every Canadian province and territory require children above a certain age to consent to their adoption. In every province and territory except for Quebec and Ontario the age of consent for adoption is 12 years old. Ontario requires consent to adoption from children as young as 7 (*Child Youth and Family Services Act*, 2017), and in Quebec the age is 10 (*Youth Protection Act,* 2017). In some jurisdictions, the court has the power to require the consent of a child younger than the prescribed age (Prince Edward Island *Adoption Act*, 1992, s. 22 (a)).

Ontario has the youngest age for consent in Canada, requiring children aged 7 and older to consent to their adoption (*Child Youth and Family Services Act,* 2017, s. 180(6)). Any child or young person who is 7 or older and who is involved in an adoption proceeding is required to meet with a Children's Lawyer for free, who ensures that the child fully understands what they are consenting to and that the consent reflects the child's true wishes. Similarly, independent legal advice is mandatory in Saskatchewan before a child can provide consent to an adoption (*Adoption Act,* 1998, s. 4(b)). In Nunavut and the Northwest Territories, the Director or an Adoption Worker is required to inform a child of their right to obtain independent legal advice, and where requested, must assist in obtaining legal advice for the child (*Adoption Act*, 1998, s. 23(2)).

Adoption in British Columbia

In Canada, the regulation of adoption falls under the jurisdiction of provincial and territorial laws. In some regions, adoption is integrated into the broader child welfare legislation; in others, it is governed by stand-alone adoption laws.

In British Columbia, the *Adoption Act ('Act')* (1996) governs adoption proceedings. There are several ways a child might be adopted under the legislation. Government placement involves the adoption of a child under the care and custody of the director of adoption under the *Adoption Act* or the director of child protection under the *CFCSA* (1996). Agency adoptions occur when an adoption agency has care and custody of a child, and the agency places the child with the adoptive parents. Additionally, a child might be adopted through 'direct placement', which is defined in s.1 of the *Adoption Act* (1996) as an "action of a parent or other guardian of a child placing the child for adoption with one or two adults, none of whom is a relative of the child." Lastly, a parent or guardian can place a child for adoption with a relative of the child.

The *Adoption Act* (1996) lists several steps that must be taken before a child can be placed for adoption. If the child's parents or guardians are requesting adoption, the parents or guardians must be informed about adoption and its alternatives (s. 6). If the parent or guardian wishes to choose the adoptive parents, they must be provided with information about prospective adoptive parents who have been approved to

adopt. The Director must also make reasonable efforts to obtain consents required for adoption under the *Adoption Act* (1996).

An adoption requires the consent of the child's parents or guardians, although Courts in British Columbia have wide discretion to waive this requirement if doing so would be in the child's best interest. The consent of parents or guardians can be dispensed of if the person cannot give informed consent, cannot be located despite reasonable efforts, has abandoned or failed to meet parental obligations, is incapable of caring for the child, or if other circumstances justify it (*Adoption Act*, 1996, s. 17).

In British Columbia, the fixed-age threshold that a child must consent to their adoption is set at 12 years old. Once a child has attained the age of 12, the child's consent is required in each type of adoption, including government placement, intra and extra-provincial agency placement, and direct placement. The *Adoption Act* (1996) describes that before a child can be placed for adoption, the Director must counsel the child about the effects of adoption if they are old enough to understand and must inform children 12 and older about their right to consent to adoption. Unlike in Ontario, Saskatchewan, Nunavut and the Northwest Territories, British Columbia's adoption scheme does not facilitate access to legal counsel to ensure the child is giving an informed consent.

The only circumstance under which the court can dispense with the child's consent is if the person is not capable of giving an informed consent. The *Adoption Act* (1996) provides no criteria to assess this. A child rights approach mandates that a child be provided with enough information to fully understand the circumstances of any proposed adoption. That information should come from an independent person who is trained in best practices in working with young people and in the law respecting the legal impact of any adoption order, particularly on the child. Currently there is no legislative requirement that the child receive advice from someone who is independent of the legal process.

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> ***“I was adopted at 13. I was asked, hey do you want to be adopted? Who by? I had capacity to make the decision but not the capacity to understand the decision I was making. I didn’t understand what I was signing up for. It’s a lot like a marriage. A 13-year-old would be crazy to get married! I could say yes or no, I could say I wanted to meet these people. But I didn’t know what all that meant, what I was signing up for.”***

Although the effects of an adoption are equally felt by children younger than 12, there is no flexibility in the *Adoption Act* (1996) to require the consent of a child under 12, even in cases where they may have the maturity to give informed consent.

The Committee on the Rights of the Child (2009) have rejected an inflexible approach to participation based on age alone:

> By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view (General Comment, 12, para. 29).

In *M(L) v. British Columbia (Director of Family Services)* (2016), Justice Newberry emphasized the gravity of decisions regarding adoption:

> [17] I do not think it is an exaggeration to say that a decision about the adoption or custody of a child is the most important decision that these courts make, at least on the civil side.

Given the significant impact an adoption can have on the life of a child, an approach to capacity and understanding that accounts for more than just age is particularly important. This is consistent with the approach taken by the Committee on the Rights of the Child (2009):

> The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child (General Comment, 12, para. 30).

Although children under 12 are excluded from giving consent, s. 30 of the *Adoption Act* nevertheless requires any prospective adoptive parent of a child between 7 and 12 to arrange for “a person authorized by the regulations to meet the child privately so the person can make a written report” (1996). The report (“s. 30 report”) must include whether the child understands what adoption means, their views on the proposed adoption, and their views on changing their name, if applicable.

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The legislation does not specify who the "authorized" person is, however in many cases the s. 30 report is written by a registered social worker and/or psychologist (see: 2014 BCCA 137, 2023 BCSC 1720, 2018 BCPC 372). The s. 30 report is required for an adoption application, unless the petitioner can give a 'satisfactory explanation' for why one was not prepared (*Adoption Act,* 1996, s. 32).

The *Adoption Act* (1996) does not explain what impact a s. 30 report has on the decision to grant an adoption order. There is limited caselaw on whether a report indicating a child's reluctance toward their adoption would be decisive.

The *Adoption Act* (1996) is clear that "the child's views and preferences, without discrimination" are included in the "best interest of the child." However, without legislative direction, the impact of a s. 30 report on the outcome of an adoption application is left to judicial discretion.

In the case of *British Columbia Birth Registration No. 2004-59-020158, Re,* (2014), the mother of a nine-year-old child sought to have her husband adopt the child, thereby terminating the biological father's parental rights.

The s. 30 adoption report clearly stated, "[t]here is no dispute that the child already considers [the applicant] to be his father" (*British Columbia Birth Registration No. 2004-*

59-020158, Re, 2014, para. 10). The report writer concluded that the applicant "should be allowed to adopt the child because this reflects the relationship that they have developed over the past four years," and that "[the child] be with a parent where he has an attachment rather than someone whom he barely knows" (*British Columbia Birth Registration No. 2004-59-020158, Re,* 2014, para. 29).

Despite this report, the trial judge dismissed the adoption application, appointed the applicant as a guardian, and granted the biological father reasonable contact with the child – a decision that was upheld in the BCCA. Ultimately, the court found that while the child's views were important, they were not sufficient to justify dispensing with the biological father's consent in the circumstances.

Conversely, in *Birth Registration No. 1999-59-017333, Re, (2011)*, Justice Brown gave considerable weight to the 12-year-old child's views in deciding whether to order an adoption in favor of the mother's new partner, against the biological father's wishes. In that decision, Justice Brown was significantly influenced by the s. 30 report in dispensing with the biological father's consent and ordering the adoption:

> [53] [P]arental claims should be viewed from perspective of their significance to the child, not their significance to the father.
>
> [54] ...I am influenced as well by the child's strongly expressed wishes, which, given her age, the particular circumstances of her life since the petitioner became involved in her life, and the strong familial and parental bonds she has developed with him and his extended family, is deserving of particular weight.

These contrasting cases highlight the significant yet varied impact of a s. 30 report in adoption decisions. While the judicial and legislative commitment to including the child's views is consistent with children's participatory rights, the weight given to those views remains the discretion of the individual decision-maker.

The Committee on the Rights of the Child is clear that the weight afforded to a child's voice should correspond to their ability to form their own view. UN General Comment No. 12 (2009) provides that "[i]f the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue" (para. 44).

The case-by-case approach to the weight of a child's views underscores the importance of developing a good practice for hearing from the child. Without reliable mechanisms for children to share their views, the decision-maker will be unable to properly weigh the child's views as part of an overall analysis of the child's best interests.

As we explain in the companion paper on capacity and participation in family law, reports intended to convey a child's views have certain limitations. Retaining a report writer can be costly for the parties involved, the report may become outdated by the time the issue is decided, and the child's views can be overshadowed by the writer's

own opinions and recommendations (Narbonne, 2024).

S. 211 of the *Family Law Act* (2011) empowers the court to appoint an individual to report on the child's views. In contrast, the s. 30 report under the *Adoption Act* (1996) is part of the adoption application prepared by the prospective adoptive parent(s). While this ensures that a report on the child's views is included, it also requires that the report be commissioned by a party seeking a specific outcome. This conflict of interest can raise questions as to the reliability of the report.

Additionally, the *Adoption Act* (1996) does not provide for a child or young person to access independent counsel or a legal advocate, and there is an absence of caselaw on judicial interviews with children in adoption proceedings.

Similar to the consent requirement for children aged 12 and older, the s. 30 report applies strictly to children between the ages of 7 and 12. The legislation does not allow for discretion to require a report on a child's views if they are under 7. The views of children younger than 7 are not discussed in the *Adoption Act* (1996). As it stands, a finalized adoption order for a child under 7 can be made without the child's knowledge of it at all. An approach that excludes children merely based on age is not consistent with our obligations under international law or with a child rights approach.

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D. Conclusion and Summary of key findings:

Definitions of a child's capacity should not be strictly and exclusively tied to age. Blanket policies denying children their legal right to participate in matters that intimately affect them based on presumptions about biological age are arbitrarily disenfranchising. Policies that consistently define children as incapable sidestep the obligation to provide appropriate support and resources that empower children's participation. Children of many ages possess the potential to understand and express their views, particularly when appropriately supported with adequate information and resources.

A child rights approach requires that children are not only heard but also taken seriously in matters that deeply affect them. This demands the involvement of trained, skilled, and independent professionals who exclusively support the child and advocate in their best interest without actual or perceived bias.

The following key findings emerged from research and interviews with young people:

1. All children have the legal right to be heard when decisions are being made about them in child welfare and in adoption matters.
2. There is no universal test for capacity. All children should be presumed to have the capacity to express their views and preferences.
3. A child's best interests and their right to be heard are directly linked. Child participation is a necessary part of protecting children.
4. Children should be provided with independent representatives to represent the children's views in child welfare proceedings. There should be codes of conduct for those representatives to ensure their independence.
5. Age alone should not be determinative of whether a child's views are included in legal proceedings that affect them.
6. Interviewers should be trained in best practices in hearing from children. They should ensure that children have the tools to understand the decisions that are being made and how they can be active participants.
7. Children should be afforded access to independent professionals who are qualified to counsel them on the effects of adoption and ensure that any consents to adoptions are properly informed. Reports of the child's views on adoption should be prepared by independent professionals, not commissioned by prospective adoptive parents.
8. Indigenous children continue to be disproportionately represented in the child welfare system. Their meaningful inclusion in decisions affecting them must address this systemic issue.

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Youth Engagement Methodology & Data

The Child Capacity Research Project sought to embed key values and principles in the research process that in turn shaped the research methodology, community engagement, and analysis of the results. These values and principles pertained to striving for accessibility, highlighting intersectionality, valuing lived and living experiences, and others crucial for meaningful engagement and research.

It was this approach, as well as the calls to action from participants, that allowed for the recognition that while the project was intended to look at four key topics with complex systems of their own, they are also interconnected in many ways. In addition, it was noted throughout the youth engagement that it was sometimes difficult for participants to speak to one system without describing the impact of another. Thus, we advise readers to recognize the intersectionality of the lived experiences reflected in the information below and that also has contributed to the richness of qualitative data that emerged.

ENGAGEMENT METHODS:

Three distinct engagement methods were utilized to provide accessible opportunities for contribution from youth and young people, primarily below the age of 30, with lived and living experiences in relation to the research topics. All three options were offered to every participant prior to written consent being provided:

Survey:

- An anonymous, online survey consisting of 3 questions was made available during the entire duration of the project
- The nature and structure of the questions allowed for participants to respond based on the experience they deemed relevant to contribute

Interviews:

- 1-hour virtual Zoom sessions with a participant and two members of the CCRP team
- Discussion questions* were provided in advance
- Follow-up interview opportunity offered

Listening Circles:

- 1-1.5 hour virtual Zoom sessions with existing youth advisories, councils, and other programming groups
- Sessions were coordinated in collaboration with group/organization leads, coordinators, and/or supporting staff
- Discussion questions* were provided in advance
- Follow-up session and/or interview with interested participants offered

***Note:** The following three questions were used in all methods of engagement and were specified (in Listening Circles and interviews) based on the topic participants wished to address. However, it is crucial to note that while these were the primary questions asked, discussions often built on what was shared in the session. The evolving conversations differed per group / participant, and as a result, the extent of questions that organically emerged were not able to be included in the list below.

Discussion Questions:

1) How do you define "capacity"? Based on your understanding, do you feel you have had capacity to make decisions, or the opportunity to use your capacity to participate in decisions?

2) Can you tell us about a time [in a family law / mental health / healthcare decision / child protection matter] when you felt like your opinion was valued and taken into consideration?

3) Based on your experience [in a family law / mental health/ healthcare decision / child protection matter], how do you think things could be improved so that your capacity to make decisions and be heard is better respected?

Stakeholders & Subject Matter Experts:

- Stakeholders and subject matter experts across sectors were invited to provide feedback on the draft outlines for all four research papers at a virtual roundtable held during the earlier stages of the project
- Individuals part of community networks were also selectively invited to provide feedback on research paper drafts as they were developed by topic

Outcomes:

- 78 participants across all methods of the youth engagement contributed their feedback by sharing their lived and living experiences
- An analysis of themes from the youth engagement by topic can be found below

Note: While the project sought to uplift intersectional experiences of young people across all four topics, there are limitations to those reflected in this paper. It is recommended that future research initiatives dedicate efforts to highlight the specificities of identities of young people that may uniquely inform the nature of their experiences with respect to the four topics examined in this project (e.g. gender and sexuality).

THEME CODE	THEME:	DETAILS/VARIANCES
1	Young people need to be listened to, trusted, and believed	• Young people accused of **lying and creating false narratives/facts** • Other factors/issues used to **discredit young person's testimonies** (e.g. medical history, siblings not experiencing same issues) • **Social workers mislead by parent/guardian** efforts creating a particular 'image' of the situation • Youth experiences of being **gaslighted** • Need to understand **variability in needs and experiences** given that each case is different • Youth need to be **supported to trust themselves** • Lack of trust in young people's capacity to make objective judgements in situations is **complex given systemic, protectionist responsibilities** • **Assumptions of what a young person needs** leads to interventions/actions that perpetuate harm • Push for placement with certain families, relatives, etc. not rooted in context of **intergenerational trauma or nature of relationship** with young person • **Lack of competency and capacity reinforced by adults** telling youth what they can't do/will never be able to do • Youth feeling immense **pressure not to perpetuate stigmas** with their decisions • Need for social workers **to balance protocol with empathy and deep listening** • **Fear of certain outcomes/consequences disregarded** by social workers pushing youth to take certain actions • Youth **need opportunity to build voice** and to have that voice **trusted** • Important to **support youth when they make "wrong choices"** and **not react** with **punitive** approach • Where providing choice is not possible young people have **the right to be informed and explained to** • Being able to **decide what feels important** • Recognizing **capacity as sometimes being inhibited by other's decisions and actions** • System resistance to certain arrangements in order to **retain decision-making power/control over youth** • **Institutions forcibly removing access and taking belongings** to compel youth to follow instructions (e.g. taking phone away) • **Lack of trust** in youth ability to **determine their own needs and capacities** • **Assumptions that youth are being 'moody'** or overactive teenagers • **Reciprocity needed from professionals/adults** in opening up to build long-term meaningful connections
2	Need for more precautionary regulations and accountability	• Need for **more screenings and background checks of families** that want to foster • **Lack of safety in foster care homes** leading to **homelessness** • Consistent changing of youth placements should be treated **as an indication of foster placement safety and quality** • **Staff in private homes not properly trained** in trauma-informed practice • **Lack of accountability and oversight** of certain programs, foster homes/placements • Foster parents/homes **not providing necessary supports** (e.g. not taking youth to school, treatment for medical conditions, new clothing) • Foster parents/homes **not involving foster youth in family activities**

		• Some **foster families and homes put on a front or act** when social workers visit • Foster parents/homes **should be required to take trauma informed trainings** • **No follow-up after decisions** made regarding adoption, placement in care or with certain people chosen by young person • Social workers **failing to complete thorough investigations (i.e. due diligence)** • Youth **do not feel safe going to MCFD** to voice issues being experienced in foster homes • **Social workers developing biases** prior to hearing from youth (e.g. first speaking with parents/guardians, reviewing files youth are not aware of) • **Need for trauma informed training and practices** that gives youth space, time, and support in the moment
3	Multi-faceted impacts contribute to further marginalization of young people	• Interventions noted to sometimes **cause situations to worsen** • Young people **downplay reality of situation** in order to avoid MCFD • **Increased risk of violence due to marginalization** (e.g. experiencing unsafe and violent situations in temporary living spaces and foster homes) • **Impacts of isolation** resulting from young people placed in homes outside of communities they are connected to (may also contribute to suicide ideation) • **Emotional distress** of separation from families and siblings Disruption in school attendance and education including uninformed interventions witnessed by peers • **Weaponization of resources against young people** to regulate behavior and enforce complacency • Landlords **not providing proper housing conditions** for youth • **Access to resources and support rigidly removed** upon turning 18
4	Youth needing to rely on self-advocacy	• Young people **having to prove their capacity** to access certain supports (e.g. independent living) • Youth **not having a loud voice results in youth not learning** what they need to/getting support • **Onus falling on** youth to make things work, navigate living situations, and self-educate about critical tasks and processes • Social workers **limited in what they can do** or **will say they are limited** • Ranging comfort and experience with verbalizing needs given **fear of speaking up** • Youth **having to set boundaries** when they are triggered/ overwhelmed (e.g. leaving meetings) • **Need to advocate to have meetings** that otherwise would not take place • Youth **feel like they need to be the "adult"** in the situation and navigate social worker feelings, biases, and agendas • **Youth having to mask** in order to appear well-adjusted while hiding true feelings to navigate situations • Youth finding out important information by **individually reaching out** to social workers • Young **people operating on survival instincts and having to navigate big decisions on their own** (e.g. in adoption situations without fully understanding implications of decision) • Young people having to **internalize trauma and blame**, addressing impacts on their own when older • **Youth 'giving up' sometimes due to not being listened** to despite relentless self-advocacy efforts

5	Lack of consistency	• Experiences of **being passed around** multiple social workers • Recommendation for **consistent support from social workers or at least for significant periods of time** (e.g. throughout high school) • **Need for scaffolding/transition process** between social workers • **Denied ability to return to certain agreements (special needs agreement) or arrangements** with rationale of not qualifying despite prior eligibility • **Recommendations from one program or institution not heeded by another** that youth access • **Opportunity to be engaged** regarding capacity and participation didn't arise **until legally mandated** • **Lack of follow-ups** across contexts e.g. after placements, assessments, decision-making • Lack of consistency in **foster home experience** • Foster care placement as **best option in some situations** • **Variances in being listened to by MCFD** vs. organizations running homes regarding needs for specific types of placement • **Experience with care system sometimes better** than that of caregivers/guardians • **Experiences range greatly based on individuals** youth happen to encounter in their lives • **Individual social workers** sometimes **make efforts to go beyond responsibilities** to provide care and support (e.g. providing presents during holidays)
6	Shifting onus onto institutions and adults	• Onus must be on professionals to **find the way best ways to communicate with youth** and ensuring they understand • Finding **best ways to meet varying access needs** e.g. neurodiversity • Need for a process that includes **opportunity for youth to express if they do not understand** especially in regards to major decisions • **Meet youth where they are at** and draw on existing services **to build adult capacity to do so** • Social workers need to **balance timelines** for critical tasks with **capacity, well-being, and comfort of youth** • Social workers **not equipped to support youth put into care at older ages** • Need for social workers to **make initiative and maintain communication** • **Finding appropriate communication methods** that meet youth capacity • Allow professionals to **support youth to articulate their needs** in certain situations • **Lack of parental cooperation barrier** for children's interests
7	Customized approaches to supporting young people	• **Check-ins are important** as a structured support but frequency should be tailored to youth needs • Regularly checking-in with youth to assess understanding, capacity, comfort, and safety in **recognition that these all can shift constantly** • **Appropriately supporting youth during difficult times** to complete certain tasks and processes that contribute to their future (e.g. finishing school) • Youth still need **support that is rooted in guidance** (balancing decision-making power with scaffolded support and participation as needed) • **Recognize competencies** to understand and complete certain tasks and requirements **will be different for youth who have not had socioeconomic privilege**
8	Under resourced supports for young people	• **Need for housing-specific funding** for youth in care going onto independent living • Need for **wrap around social supports**

		• Need for **youth resources outside of urban centers (i.e. in rural areas)** • Need for governments to **increase funding to nonprofits to deliver supports** • Funding to **support youth in care to experience cultural celebrations** when relevant • **Smaller communities lacking resources** with consequences impacting young people who "fall through cracks" • Mental health supports specifically needed **to build capacity of children to self regulate** (e.g. appropriate therapy) • **Need for individual connection to share information** versus publications/documents
9	Impacts of overburdened system	• **Limited availability of social workers necessitates other supports** to fill in gaps (e.g. youth workers supporting youth in between social worker availability) • Youth **limited by availability of social workers** to access supports, information, and guidance • Amount of folks that need support sometimes leads to **apathy or "someone else will help" mentality** against youth in unhoused situations • **Significant delays in providing safe placements/options** for youth (i.e. taking years to find the right home) • Need for professionals to **recognize where the system lacks and does not work**
10	Lack of autonomy	• Preventing exercise of autonomy while being on **extended family plan** inhibits capacity development • **Youth experiencing repercussions** from caregivers after being told they are allowed to make a choice (false autonomy) • **Independent living** allows for autonomy • **Access to financial resources** supports autonomy
11	Addressing intersectional needs of young people	• **Many youth in care have specific access needs** as well as behavioral and/or mental health challenges • Presence of additional challenges **leads adults to perpetuate labelling of youth as having 'problems'** to justify not listening and lack of autonomy • **Extra pressure and onus on youth to self-regulate** to present 'appropriate behavior' as deemed by foster homes/placements • **Being labelled with severe disabilities/misdiagnosis/exaggerated conditions** given 'behavioral issues' or perceived lack of capacity
12	Exclusion of youth from important processes	• Some youth being **excluded from ICM meetings based on rationale that they are lacking capacity** to be part of the meeting • Professionals/adults in meeting **already arrive at conclusions,** brainstorm ideas, etc. without any input from youth • **No space for youth capacity to shift and emotional expression**
13	Ageist beliefs against young people	• Young people **guilted into feeling need to express gratitude**/owe gratitude • **Adults dictating and influencing** young people how to feel • Youth having to step into caregiver role for siblings
14	Intersections with other interventional systems	• **Questions asked during medical treatments** sometimes prompted MCFD intervention • **Members of medical teams** may sometimes join other intervention efforts (e.g. family therapy sessions)
15	Need for systemic supports prioritizing youth needs and interests	• Need to shift **systemic practices and policies for long-term impact** • Legal representation **helps translate and advocate youth needs**

Appendix 1

Province or Territory	Party Status	Notice of Proceedings	Presumption for attending proceedings	Appointing Counsel to Child/Youth	Counsel's fees
Ontario *Child, Youth and Family Services Act, 2017.*	No	Yes – 12 and older	Yes – 12 and older*	Mandated in certain situations	Publicly funded
Alberta *Child Youth and Family Enhancement Act, 2000.*	Yes** – all ages	Yes – 12 and older	Yes – all ages*	Court's discretion	Financial means assessment
British Columbia *CFCSA, 1996.*	Yes – all ages	Yes – 12 and older	Unaddressed	Unaddressed ****	Unaddressed
Quebec *Youth Protection Act, chapter P-34.1.*	Yes – all ages	Yes – all ages	Yes – all ages*	An advocate is appointed automatically	Publicly funded
Prince Edward Island *Child Protection Act, 2000.*	No	No	No	12 and older – court's direction	Publicly funded
Manitoba *The Child and Family Services Act, 1985-86.*	Yes – 12 and older	Yes – 12 and older	Yes – required for 12 and older*	Court's discretion; criteria provided. Right to instruct counsel only for 12 and older.	Unaddressed
Saskatchewan *Child and Family Services Act, 1985-86.*	No	Court's discretion; "best interest"	No	Unaddressed ***	Publicly funded - Counsel for Children Program
Nova Scotia *Children and Family Services Act, 2000.*	Yes – 16 is automatic, 12 and older can apply	Yes – 12 and older	Unaddressed	Unaddressed	Publicly funded if child retains counsel

Province or Territory	Party Status	Notice of Proceedings	Presumption for attending proceedings	Appointing Counsel to Child/Youth	Counsel's fees
Newfoundland and Labrador *Children Youth and Families Act, 2018.*	Unaddressed	Yes – 12 and older	Unaddressed	Unaddressed	N/A
New Brunswick *Child and Youth Well-Being Act, 2022*	Unaddressed	Only in the case of transfer of guardianship for Children 12 and older.	Unaddressed	Court's discretion but criteria provided. A child aged 9 or older is presumed capable of expressing their views to counsel	Unaddressed
Yukon *Child and Family Services Act, 2008*	No	Yes – 12 and older	Yes – all ages*	Independently assessed by 'official guardian'	Publicly funded
Nunavut and Northwest Territories *Child and Family Services Act, 1997.*	Unaddressed	Yes – 12 and older	Yes – 12 and older*	Court's discretion	Financial means assessment

* Child or youth can be excluded at the Court's discretion.
** In supervision, guardianship and secure services proceedings.
*** The Child and Family Services Act in Saskatchewan does not address representation for children, but the Counsel for Children program provides lawyers for children of all ages involved in proceedings under the Act.
**** The CFCSA (1996) does not address representation for children, however, the Director can provide independent legal counsel to a child involved in a child protection case if they have been made a party by court order and are 12 or older.