

REPORT

Interrupted childhoods

Over-representation of Indigenous and Black children in Ontario child welfare



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Human Rights Commission
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droits de la personne

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ISBN: 978-1-4868-1115-1 (Print)

978-1-4868-1116-8 (HTML)

978-1-4868-1117-5 (PDF)

February 2018

Available in various formats on request

Also available online: www.ohrc.on.ca

Disponible en français



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Contents

Summary and key findings	2
1. Introduction	6
2. Why is collecting race-based data important?	13
3. CASs and child welfare legislation	15
4. Research on racial disproportionality in child welfare	16
4.1. Indigenous children.....	17
4.2. Black children.....	21
4.3. Factors that may lead to discrimination	24
4.4. Impacts of being taken into care	27
4.5. Human rights-based data collection in the child welfare system	29
5. Results	31
5.1. CASs’ data collection practices	32
5.1.1. Data collection policies, protocols, forms, systems and training.....	32
5.1.2. Data collection practices	34
5.2. Admissions into care.....	36
6. Organization and community responses	41
6.1. Responses from children’s aid societies to the OHRC’s data request and inquiry results.....	41
6.2. Responses from communities and organizations.....	42
7. Discussion	44
7.1. Data collection practices.....	44
7.2. Racial disproportionality in admissions into care	46
8. Recommendations and commitments	50
Appendix A: Detailed methodology	57
Appendix B: Glossary.....	63
Appendix C: Acknowledgements.....	66
Appendix D: Letter to Minister Philpott.....	67

Summary and key findings

For decades, Indigenous, Black and other racialized families and communities have raised the alarm that their children are over-represented in the child welfare system. Although Indigenous and racialized children's pathways through the system are quite different, Ontario-based research shows that racial disparities – that is, differences between racial groups at decision-making points in a service – do exist. The number of Indigenous children in care is staggering, and the Truth and Reconciliation Commission of Canada (TRC) has called the situation a “growing crisis.”

The issues that give rise to the over-representation of Indigenous and Black children in the child welfare system are complex and multi-faceted. For example, low income, which is one of the inter-generational effects of colonialism, slavery and racism in society, is a major driver of child welfare involvement for Indigenous and Black children. Many Indigenous, Black and other racialized families, communities, advocates and others are also concerned that systemic racial discrimination in the child welfare system plays a significant role.

The OHRC's inquiry

To respond to these concerns, in 2016 the Ontario Human Rights Commission (OHRC) launched a public interest inquiry to examine the involvement of Indigenous and racialized children and youth in the child welfare system. We used our powers under s. 31 of the Ontario *Human Rights Code* to request information from children's aid societies (CASs) on their race-based data collection practices and how they track children and families receiving their services.

The goal was to examine whether Indigenous and Black children are over-represented at CASs, particularly in admissions into care. We were concerned because racial disproportionality (the over- or under-representation of certain racial groups in a service relative to their proportion in the general population) and racial disparity may be indicators of systemic racial discrimination. This report discusses the results of this analysis, and describes the human rights-based data collection practices CASs use.

What we found

Despite the limitations of the race-based data the OHRC received from mainstream CASs, the OHRC observed disproportionately high incidences of Indigenous and Black children in admissions into care at many of these agencies across the province. Although the racial disproportionality data presented in this report is not conclusive of discrimination by CASs, it is a starting point for CASs and the government to look critically at racial inequality in the sector.

When considered along with the long-standing issues people in Indigenous and Black communities have raised about discrimination in the child welfare sector, the disproportionalities we found raise serious concerns for CASs. CASs should act on these findings by investigating whether their structures, policies, processes, decision-making practices and organizational cultures may adversely affect Indigenous and Black families, and potentially violate the *Ontario Human Rights Code*.

Where notable racial disparities or disproportionalities exist in quantitative data collected by CASs, they should:

- Acknowledge these disparities/disproportionalities and their potential impact on the trust and confidence of affected communities in the organization
- Acknowledge that these disparities/disproportionalities raise serious concerns that the CAS should proactively and transparently investigate.

This investigation should:

- Canvass and reflect the perspectives and experiences of affected communities
- Reflect existing relevant social science evidence
- Attempt to isolate possible source(s) of the disparities/disproportionalities
- Communicate the findings with affected communities to further understand their concerns
- Set out next steps, with associated measures of success and monitoring, and
- Report in a public and transparent way on the findings and next steps.

To this end, the OHRC has made a series of recommendations for CASs, government and other parties (see Section 8).

Here are some specific conclusions from the inquiry:

- Indigenous children were over-represented in admissions into care at 93% of agencies we looked at (25 of 27), with many CASs showing extreme levels of disproportionality. Overall, the proportion of Indigenous children admitted into care was 2.6 times higher than their proportion in the child population. These figures likely underestimate the proportions of Indigenous children admitted into care, in part because the OHRC's sample only included non-Indigenous (mainstream) CASs.
- Black children were over-represented in admissions into care at 30% of agencies (8 of 27). Overall, the proportion of Black children admitted into care was 2.2 times higher than their proportion in the child population.
- In contrast, at more than half of the 27 CASs, White children were under-represented among children admitted into care (15 of 27 agencies or 56%).
- Race-based data collection processes and practices are a patchwork across the sector. We looked at 38 mainstream CASs' data collection practices. These CASs' human rights-based (particularly race-based) data collection practices are widely inconsistent with each other and vary even within many individual agencies.
- More than 40% of CASs did not know the racial backgrounds or Indigenous identities of more than one in five children served by their agency, when considering referrals, cases opened for investigation, and admissions of children into care. Four agencies did not know the racial backgrounds or Indigenous identities of over half the children placed into care.
- For most CASs, these gaps and inconsistencies make it statistically difficult to assess if racial disparities exist across different service decisions (such as placing children into care), which makes it difficult to assess whether systemic racial discrimination may be happening.
- The best and most complete data is collected by agencies that:
 - Have a deliberate, holistic approach to data collection grounded in trying to understand the needs of the marginalized communities they serve

- Are concerned about racial disproportionality and disparities
- Have dedicated the resources to do these analyses, and
- Have trained their staff.

The OHRC learned that the government is planning to introduce a directive requiring CASs to begin to systematically collect human rights-based data. As part of its mandate to address systemic discrimination, Ontario's Anti-Racism Directorate is also developing standards and guidelines on collecting race-based data. These initiatives are an important step forward, but to be effective, they must be put into action. To ensure compliance and continuity over time, CASs should be required by law to collect human rights-based data, including race-based data.

The Ontario *Human Rights Code* aims to create “a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.” Whether because of systemic discrimination in the child welfare system or broader social exclusion, the over-representation of Black and Indigenous children in admissions into care stands in the way of achieving this vision of society. Being admitted into care comes with far-reaching consequences that can have a negative impact on children's future ability to thrive.

Identifying and addressing potential systemic racial discrimination in the child welfare sector is one part of the picture. The broader social and economic issues that contribute to the over-representation of Indigenous and Black children in child welfare also need to be addressed. These issues require a multi-pronged response from government, CASs and civil society to create truly equitable outcomes for Indigenous and racialized children and families.

1. Introduction

When child welfare authorities remove children from their caregivers because of concerns about abuse or neglect, it can be traumatic and tragic for everyone involved – children, their families and even their communities. Being admitted into care comes with far-reaching consequences that can have a negative impact on children’s future ability to thrive. It is an unfortunate reality that some children need to be placed in care to keep them safe. But too often, for First Nations, Métis, Inuit, Black¹ and other racialized families, being involved with the child welfare system and having a child removed is fraught with concerns that the system is not meeting their or their children’s needs, is harmful, and may be discriminatory.

For decades, Indigenous, Black and other racialized families and communities have raised the alarm that their children are over-represented in the child welfare system and have expressed a resulting lack of trust in mainstream child welfare services.² More recently, different reports and studies have documented this over-representation. Although Indigenous and racialized children’s pathways through the child welfare system are quite different, Ontario-based research shows that racial disparities – that is, differences between racial groups at decision-making points in a service – do exist. Indigenous, Black, Latin American and West Asian³ children are more likely to be the subject of maltreatment-related investigations than White children.⁴ For Indigenous and Black children, these disparities continue into other service decisions,⁵ including the decision to place children into care.⁶

¹ See the Glossary in Appendix B for how the OHRC characterized people’s racial backgrounds and Indigenous identities for this inquiry.

² See Leyland Gudge, “Toronto CAS must partner with Black community to help youth in care” *Share* (25 January 2018) at 5.

³ Refers to the Statistics Canada category of West Asian, which includes Persian and Afghani people. Barbara Fallon et al, “Child Maltreatment-Related Service Decisions by Ethno-Racial Categories in Ontario in 2013 – August 2016” (2016) Canadian Child Welfare Research Portal 1.

⁴ Barbara Fallon et al, *ibid.*

⁵ For a definition of “service decisions”, see the glossary in Appendix B.

⁶ Barbara Fallon et al, *supra* note 3; Catholic Children’s Aid Society of Toronto, *Services to African-Descent Families and Children: A Review of the Data*, Presentation to the Quality Committee of the Board (March 23, 2017) (Presentation provided to the OHRC); Bryn King et al, “Factors Associated With Racial Differences in Child Welfare Investigative Decision-Making in Ontario, Canada” (2017) 73 *Child Abuse & Neglect* 89.

The number of Indigenous children in care is staggering, and the Truth and Reconciliation Commission of Canada (TRC) has called the situation a “growing crisis.”⁷ In 2016, over half of children (52.2%) under age 15 in foster care in Canada were Indigenous, despite Indigenous children only accounting for 7.7% of the child population.⁸ There are more Indigenous children in care today than there were in residential schools at the height of their use.⁹

The issues that give rise to the over-representation of Indigenous and Black children in the child welfare system are multi-faceted. For example, low income, which is one of the inter-generational effects of colonialism, slavery and racism in society,¹⁰ is strongly associated with caregiver and household risk factors for children.¹¹ In Ontario, children who are the subject of a child welfare investigation whose families run out of money for food, housing or utilities face approximately double the odds of being placed into care.¹² Poverty and race intersect. Research

⁷ Susana Mas, “Truth and Reconciliation Commission Final Report Points to ‘Growing Crisis’ for Indigenous Youth” *CBC news* (14 December 2015) online: CBCnews www.cbc.ca/news/politics/truth-and-reconciliation-final-report-1.3361148 (retrieved September 26, 2017).

⁸ Statistics Canada. 2016. Family Characteristics (22), Aboriginal Identity (9), Registered or Treaty Indian Status (3), Age (8A) and Sex (3) for the Population in Private Households of Canada, Provinces and Territories, Census Metropolitan Areas and Census Agglomerations, 2016 Census – 25% Sample Data (table). “Data tables, 2016 Census.” Last Updated January 16, 2018. www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=110517&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=122&VID=0&VNAMEE=&VNAMEF= (accessed January 18, 2018).

⁹ Cindy Blackstock, “First Nations Child and Family Services: Restoring Peace and Harmony in First Nations Communities” in Kathleen Kufeldt & Brad McKenzie, eds, *Child Welfare: Connecting Research, Policy and Practice* (Waterloo: Wilfred Laurier University Press, 2003) 331.

¹⁰ For example, in describing the legacy of the residential schools, the TRC stated, “Poor educational achievement has led to the chronic unemployment or underemployment, poverty, poor housing, substance abuse, family violence, and ill health that many former students of the schools have suffered as adults.” Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) online: Truth and Reconciliation Commission of Canada www.trc.ca (retrieved September 13, 2017) at 106; Frances Henry & Carol Tator, *The Colour of Democracy: Racism in Canadian Society*, 4th ed. (Toronto, Nelson Education, 2010).

¹¹ David Rothwell et al, “Explaining the Economic Disparity Gap in the Rate of Substantiated Child Maltreatment in Canada” *J of L & Social Policy* (in press).

¹² Kofi Antwi-Boasiako et al, “Ethno-racial Categories and Child Welfare Decisions: Exploring the Relationship with Poverty” (2016) *Child Welfare Research Portal* 1.

supports that racial disparities exist between White children living in poverty and Indigenous and racialized children living in poverty with respect to child welfare involvement.¹³

Many Indigenous, Black and other racialized families, communities, advocates and others are also concerned that systemic racial discrimination in the child welfare system plays a significant role. In our 2016 consultation on racial profiling, the OHRC heard from many Indigenous and Black participants about troubling experiences and perceptions of systemic racial discrimination in the child welfare system.¹⁴ For example, a midwife working in hospitals said:

I work as a midwife, primarily with Aboriginal women, and have lost track of how many racist assumptions and mistreatments I've observed based on race. For example...calling social workers or child protection agencies because parents are young and native – massive profiling in the selection of who has that involvement. Then, once that involvement starts, Aboriginal women are much more likely to have their babies removed for much more dubious reasons.¹⁵

As well, given the grave concerns about racial disproportionality in child welfare, the OHRC is concerned that Indigenous, Black and other racialized children may not equally enjoy the rights provided for under international human rights standards. In 1991, Canada ratified the United Nations *Convention on the Rights of the Child*. Among other rights, this treaty lays out the rights of children to not be separated from their parents against their will, unless it is in children's best interests.¹⁶ Even

¹³ *Ibid.*

¹⁴ Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario* (Toronto: Queen's Printer for Ontario, 2017) online: Ontario Human Rights Commission www.ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario [*Under Suspicion*]; See also Ontario Association of Children's Aid Societies (OACAS), *One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians, Practice Framework Part 1: Research Report* (Toronto: Ontario Association of Children's Aid Societies, 2016) online: OACAS www.oacas.org/ (retrieved October 25, 2016).

¹⁵ Ontario Human Rights Commission, *Under Suspicion, ibid.*, at 55.

¹⁶ See Article 9, *Convention on the Rights of the Child*, 28 May 1990, UNTS. vol. 1577, p. 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) [CRC]. International treaties and conventions are not part of Canadian law unless they have been implemented through legislation. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 [*Baker*] at para. 69. However, the Supreme Court of Canada has stated that international law helps give meaning and context to Canadian law. In *Baker* at para 70 the Court said that domestic law (which includes the *Code* and the Canadian *Charter of Rights and Freedoms*) should be interpreted to be consistent with

where this separation occurs, due regard must be paid to children's ethnic, religious, cultural and linguistic backgrounds when considering where to place them.¹⁷ Further, States Parties (countries that have ratified or signed their acceptance to the treaty) must take measures to protect children from abuse and neglect. These measures should include creating social programs that provide the necessary support for children and caregivers.¹⁸

In December 2015, as part of its 94 Calls to Action, the TRC called on governments to commit to changing the child welfare system to reduce the number of Indigenous children in care.¹⁹ These Calls to Action reflect the principles set out in the *United Nations Declaration on the Rights of Indigenous Peoples*.²⁰ The OHRC responded to these Calls to Action, and to repeated calls from people in Black communities, by committing to use its mandate to examine the over-representation of Indigenous and racialized children and youth in Ontario's child welfare system.

Collecting disaggregated data based on race or Indigenous identity is often the first step in understanding if racial disparities exist and if they indicate systemic racial discrimination in an organization or sector.²¹ This is why the OHRC decided to use

Canada's international commitments. See also *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295/ UNGAOR, 61st Session, A/RES/61/295 (2007), art 7.2, which states, "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group."

¹⁷ *CRC, ibid*, art 20.3.

¹⁸ *CRC, ibid*, art 19.

¹⁹ Five of the Calls to Action urge the federal and other levels of government to commit to reducing the number of Indigenous children in care; report annually on the number of First Nations, Inuit and Métis children in care; enact Aboriginal child welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases; and other actions to improve child welfare for Indigenous peoples. Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) online: Truth and Reconciliation Commission of Canada www.trc.ca (retrieved September 13, 2017) at 319-320.

²⁰ *Ibid*, at 21; Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015).

²¹ For a definition of systemic racial discrimination, see the glossary in Appendix B.

our inquiry powers under the Ontario *Human Rights Code (Code)*²² to ask for data and examine racial disproportionality in the child welfare system in Ontario, particularly in admissions into care. This data creates a starting point for the OHRC to raise awareness about these issues. The goals of the inquiry were to:

- Learn more about human rights-based data collection practices that CASs use and the government's role in supporting these practices
- Examine whether Indigenous and Black children and youth are over-represented among children admitted into care at individual CASs, relative to their representation in the population
- Examine research and current initiatives related to the over-representation of Indigenous and Black children in the child welfare system
- Make recommendations for change.

The role of the Ontario Human Rights Commission

The *Code* prohibits discrimination against people based on race, ancestry, colour, creed, place of origin, ethnic origin, among other grounds, in five social areas, including services such as child welfare services. Racial discrimination against Indigenous and racialized people can occur based on one or more of these grounds. Under the *Code*, the OHRC works to identify, prevent and eliminate discrimination, and promote and advance human rights across the province. We envision an inclusive society where everyone takes responsibility for promoting and protecting human rights, where everyone is valued and treated with equal dignity and respect, and where everyone's human rights are a lived reality.

The OHRC's mission is to promote and enforce human rights, engage in relationships that embody the principles of dignity and respect, and create a culture of human rights compliance and accountability. We act as a driver for social change based on principles of substantive equality. We accomplish our mission by exposing, challenging and ending entrenched and widespread structures and systems of discrimination through education, policy development, public inquiries and litigation.

²² *Human Rights Code*, RSO 1990, c H.19. Subsection 31(1) of the *Code* empowers the OHRC to conduct inquiries to carry out its functions if the OHRC believes it is in the public interest to do so.

A word about terminology

The *Code* prohibits discrimination based on several grounds, including race. Rather than being a biological reality, “race” is socially constructed to create differences among groups with the effect of marginalizing some people in society.

In this report, we use the term “racialized people” to refer to people who are not Indigenous or White. “Racialization” is the “process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.”²³ The term “racialized” is widely preferred over descriptions such as “racial minority,” “visible minority” or “person of colour” as it expresses race as a social construct rather than a description of people based on perceived characteristics.

When referring collectively to people who are First Nations, Métis or Inuk (Inuit), we use the term “Indigenous peoples.”²⁴ It is important to note that Indigenous peoples understand themselves as peoples or nations, not as racial or ethnic groups. There are many consequences that flow from this distinction, including Indigenous peoples’ rights to land and rights to self-determination, which includes rights to self-government. These rights have been recognized at the international level through the *United Nations Declaration on the Rights of Indigenous Peoples*. To respect these distinct entitlements, Indigenous peoples must be distinguished from other communities and recognized as unique. We encourage CASs, government and others to clearly recognize Indigenous peoples as distinct peoples and nations when considering data collection and other aspects of service delivery.

As such, we use the term “race-based data” cautiously in this report, to not erase these distinctions. This term encompasses data collected on children’s racial backgrounds, or racialized identity, and Indigenous identity.

²³ Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen’s Printer for Ontario, 1995) (Co-Chairs: D. Cole & M. Gittens) at 40-41.

²⁴ This is the term used in the *United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 16.

We use the term “Black” to describe children and people who are African-descended, such as African-Canadian, African-Caribbean, continental African people, *etc.*

See the glossary in Appendix B for more information about our use of terminology and categories when conducting our analysis.

Overview of method and notable limitations

In 2016, the OHRC wrote to 47 CASs across the province to ask about the data collection practices they use to monitor Indigenous and racialized children, youth and their families’ first contact with the system, how they progress through it, and transition out.²⁵ With this information, we first conducted a review of CASs’ human rights-based data collection practices, with an emphasis on whether they collect race-based data. We limited this analysis to the 38 CASs that serve children of all racial and Indigenous backgrounds (mainstream CASs) because we were most concerned about the potential for systemic racial discrimination at these agencies.

Second, to understand whether Indigenous and Black children and youth are over-represented in admissions to care, we compared race-based admissions data²⁶ from 27 mainstream CASs to customized Statistics Canada data from the National Household Survey 2011 (NHS 2011) identifying the proportion of each racial and Indigenous group in the child population. Details about our methodology and analysis are included in Appendix A.

This inquiry has several limitations. For example, we have not included Indigenous agencies in our quantitative analysis because we could not run the disproportionality analysis on data supplied by child welfare agencies with a specific mandate to serve Indigenous children (Indigenous CASs). This inquiry therefore only paints a partial picture of the situation of Indigenous children admitted into care in Ontario. This limitation is discussed further in Section 7.

²⁵ See Chief Commissioner Renu Mandhane, Letter to Children’s Aid Societies in Ontario (24 February 2016) online: Ontario Human Rights Commission www.ohrc.on.ca/en/news_centre/children%E2%80%99s-aid-societies-ontario-re-request-disaggregated-data-regarding-children-and-youth-ontario.

²⁶ People who identify with more than one *Code* ground (such as race, ancestry, sex, creed, and disability) are often more vulnerable to discrimination. Although we requested data from CASs reflecting several *Code* grounds, we decided to focus our analysis on the race and Indigenous identity data we received.

We also recognize that the child welfare system is changing. During and after the time frame we collected the inquiry data for, some Indigenous CASs assumed responsibility for child protection services and began serving Indigenous children who would have previously been clients of mainstream agencies. If we collected the same data today, the numbers of Indigenous children served by mainstream agencies in these regions (e.g. Algoma district) would be lower compared to what we found in our inquiry. We are reporting our findings from this time period for all mainstream agencies, because all organizations have lessons to learn from human rights and race-based data collection.

In addition, many CASs had a high amount (at least 20% or more) of missing or unknown race-based identity data²⁷ in their service decisions (e.g. admissions into care). This limited our ability to draw conclusions about racial disproportionality and disparities across an agency's decision-making practices. An agency that has a high amount of missing/unknown race-based data likely has more Indigenous, Black and/or White children reflected in these service decisions than reported.

Also, our sample included agencies that have small proportions of Indigenous and Black children in their catchment areas, and small numbers of children from these groups in care. This may affect the reliability of conclusions that can be made about disproportionality at these agencies. We included these agencies because all organizations concerned about racial discrimination or systemic barriers should collect race-based data, regardless of size, where they are located in the province, or the racial diversity of the communities they serve. A complete list of limitations is laid out in Appendix A.

2. Why is collecting race-based data important?

Many complex reasons exist for the over-representation of Indigenous and Black children in the child welfare system. On their own, statistics that show racial disproportionality and disparity in the child welfare system are generally not conclusive of discrimination by CASs. But without adequate data, it is hard to determine whether systemic racial discrimination is a factor that contributes to racial disproportionality and disparity.

²⁷ For definitions of "missing data" and "unknown data" see the glossary in Appendix B.

Systemic discrimination can be diagnosed by looking at:

- Numerical data
- Policies, practices and decision-making processes
- Organizational culture.

Appropriate data may constitute circumstantial evidence of the existence of inequitable practices.

For many years, the OHRC has called for human rights-based data collection in different sectors, including policing, corrections, education and child welfare. Appropriate data collection is necessary to effectively monitor for discrimination, identify and remove systemic barriers, lessen or prevent disadvantage, and promote substantive equality for people identified by *Code* grounds such as race, disability and sex. The OHRC's guide, *Count Me In!*, offers a practical resource on steps organizations can take to collect human rights-based data.

CASs and governments have a responsibility to make sure they are not knowingly or unconsciously engaging in systemic discrimination. Human rights-based demographic data collection is often a necessary tool for assessing whether people's rights under the *Code* have been violated, especially when systemic discrimination may be involved. It is the OHRC's long-standing position that organizations should collect and analyze data of this type when they have or ought to have reason to believe that discrimination, systemic barriers or historical disadvantage may exist. In these cases, collecting and analyzing data may be a component of the duty to take action to prevent a violation of the *Code*. Where the data reveals that there is a problem, organizations must be prepared to act (see Section 8 for a list of steps organizations can take to respond to systemic racial discrimination).

With human rights-based data, the government can identify and address factors leading to social exclusion. Overall, human rights data collection can contribute to realizing the *Code's* vision of an inclusive and equitable Ontario.

3. CASs and child welfare legislation

Currently, CASs are governed by the *Child and Family Services Act*. A new Act, the *Child, Youth and Family Services Act (CYFSA)*, has been passed, but at the time of writing has not fully come into force. The purpose of the *CFSA* is to promote the best interests, protection and well-being of children.²⁸ The *CFSA* requires CASs to consider the least disruptive course of action to help a child.²⁹ Decisions that affect children's and parents' rights and interests must be made according to clear, consistent criteria.³⁰

CASs are required to investigate allegations or evidence of risk of harm to children.³¹ Guided by the risk factors outlined in the legislation, child welfare workers assess the level of risk and whether the child is in need of protection. Child protection issues can arise from factors such as risk of physical harm due to a caregiver's action or a pattern of neglect, sexual abuse or exploitation, a lack of needed medical treatment for physical and/or mental health concerns, or emotional harm.³²

CASs' decisions are subject to procedural safeguards.³³ For example, when a child is removed and placed in care without parental consent, a child protection hearing must be held before a court within five days.³⁴ The court holds hearings to decide if the child can be returned home, will remain under CAS supervision, be placed in care for a specified period of time, or should be made a permanent ward of the state. Some court orders will be brought back before a judge for review before they expire, and certain matters can be appealed and reviewed by the court.³⁵

²⁸ *Child and Family Services Act*, RSO 1990, c C 11 [*CFSA*] s 1(1). The *Child, Youth and Family Services Act*, SO 2017, c 14 Sched 1 [*CYFSA*] has received Royal Assent and is expected to fully come into force in the spring of 2018.

²⁹ *CFSA*, *ibid*, s 1(2)(2); *CYFSA*, *ibid*, s 1(2)(2).

³⁰ *CFSA*, *ibid*, s 2(2)(b); *CYFSA*, *ibid*, s 15(4).

³¹ *CFSA*, *ibid*, s 15(3)(a); *CYFSA*, *ibid*, s 35(1)(a).

³² *CFSA*, *ibid*, s 37(2); *CYFSA*, *ibid*, s 74(2).

³³ *CFSA*, *ibid*, s 2(2)(b); *CYFSA*, *ibid*, s 15(4).

³⁴ *CFSA*, *ibid*, ss 46, 47(1); *CYFSA*, *ibid*, ss 88(a), 90(1).

³⁵ For an overview of the child welfare process aimed at children and youth, see Justice for Children and Youth, *Legal Rights Wiki* (2013) online: Justice for Children and Youth <http://jfcy.org/en/rights/child-protection-court/> (retrieved February 27, 2018).

Although child welfare workers are required to assess each case objectively based on the criteria outlined in the *CFSA*, there is still room for subjectivity in decision-making. The OHRC is concerned that this may open the process up to discriminatory bias.

4. Research on racial disproportionality in child welfare

Research shows that Indigenous children are severely over-represented in the Canadian child welfare system.³⁶ While Canadian data on Black children is far more limited, it and a wide body of research in the United States (U.S.) also show over-representation in the child welfare system.³⁷ Studies from the U.S. and Canada shed light on the distinct trajectories Indigenous and Black children take as they progress through the system, and the reasons why these over-representations may exist for each group.

³⁶ Barbara Fallon et al, *supra* note 3; Catholic Children’s Aid Society of Toronto, *supra* note 6; Bryn King et al, *supra* note 6; Chantal Lavergne et al, “Visible Minority, Aboriginal and Caucasians Children Investigated by Canadian Child Protective Services” (2008) 87:2 *Child Welfare* 59; John Fluke et al, “Research Synthesis on Child Welfare: Disproportionality and Disparities” in *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (New York: Center for the Study of Social Policy, 2011), online: Center for the Study of Social Policy www.cssp.org/publications/child-welfare?type=child_welfare_alliance_for_race_equity&title=Child%20Welfare:%20Alliance%20for%20Race%20Equity (retrieved January 16, 2017); Elizabeth Bartholet et al, “Chapin Hall Issue Brief: Race and Child Welfare” (June 2011) Chapin Hall 1 online: chapinhall.org (retrieved October 12, 2017).

³⁷ Barbara Fallon et al, *ibid*; Catholic Children’s Aid Society of Toronto, *Services to African-Descent Families and Children: A Review of the Data*, Presentation to the Quality Committee of the Board (March 23, 2017) (Presentation provided to the OHRC); Bryn King et al, “Factors Associated With Racial Differences in Child Welfare Investigative Decision-Making in Ontario, Canada” (2017) 73 *Child Abuse & Neglect* 89; Chantal Lavergne et al, “Visible Minority, Aboriginal and Caucasians Children Investigated by Canadian Child Protective Services” (2008) 87:2 *Child Welfare* 59; John Fluke et al, “Research Synthesis on Child Welfare: Disproportionality and Disparities” in *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (New York: Center for the Study of Social Policy, 2011), online: Center for the Study of Social Policy www.cssp.org/publications/child-welfare?type=child_welfare_alliance_for_race_equity&title=Child%20Welfare:%20Alliance%20for%20Race%20Equity (retrieved January 16, 2017); Elizabeth Bartholet et al, “Chapin Hall Issue Brief: Race and Child Welfare” (June 2011) Chapin Hall 1 online: chapinhall.org (retrieved October 12, 2017).

4.1. Indigenous children

Despite making up only 4.1% of the population in Ontario under age 15, Indigenous children represent approximately 30% of foster children.³⁸ Indigenous children are over-represented at all points of child welfare decision-making.³⁹ This over-representation increases as service decisions become more intrusive.⁴⁰

This severe disproportionality is a continuation of Canada's colonial past. Canada's history of assimilationist policies, including residential schools, resulted in Indigenous children being uprooted from their families and communities and being disconnected from loving child-rearing practices, parental role models, their cultures and identity.⁴¹ These inequalities continued as residential schools began to close. Starting in the 1950s, child welfare authorities removed Indigenous children from their families and communities in great numbers. Known as the "Sixties Scoop," children were sent to be fostered or placed for adoption in mostly non-Indigenous families.⁴² Formal inquiries

³⁸ Statistics Canada, 2016, *supra* note 8.

³⁹ The 2013 Ontario Incidence Study of Reported Child Abuse and Neglect (OIS-2013) showed that Aboriginal children are more than 130% more likely to be investigated than White children. Allegations of abuse or neglect are 15% more likely to be substantiated when the investigation involves an Aboriginal child than a White child and 41% more likely to be transferred to ongoing services. Aboriginal children are 168% more likely to be placed in out-of-home care during an investigation than White children. Barbara Fallon et al, 2013 *supra* note 3.

⁴⁰ *Ibid.* Indigenous caregivers may also be over-represented among people required to undergo drug and alcohol testing. The Motherisk Commission reviewed over 1,200 cases involving hair tests for drugs and alcohol done by the Motherisk Laboratory at Toronto's Hospital for Sick Children. The review, which was established because Motherisk hair testing was found to be unreliable, found that Indigenous families were over-represented. They constituted 14.9% of the people tested, and only 2.8% of Ontario's population. Motherisk Commission, *Harmful Impacts: The Reliance on Hair Testing in Child Protection Report of the Motherisk Commission* (Toronto: Ministry of the Attorney General, 2018) (Commissioner: Judith C. Beaman) at vii online: Motherisk Commission <https://motheriskcommission.ca> (retrieved February 27, 2018).

⁴¹ *Looking Forward, Looking Back: Report of the Royal Commission on Aboriginal Peoples, Volume 1* (Ottawa: Canada Communication Group - Publishing, 1996) online: Government of Canada www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx (retrieved October 4, 2017) at 312; The Truth and Reconciliation Commission of Canada, *supra* note 10 at 104-105.

⁴² See Cindy Blackstock, "The Occasional Evil of Angels: Learning from the Experiences of Aboriginal Peoples and Social Work" (2009) 4:1 *First Peoples Child & Family Rev* 28.

into these policies and practices have concluded that the residential school system and Sixties Scoop constituted forms of cultural genocide against Indigenous families and communities.⁴³

This history of oppression and the continued discrimination that Indigenous peoples face today has led to multiple negative social and economic disadvantages, such as low levels of education, high levels of unemployment, extreme levels of poverty, inadequate housing and health disparities.⁴⁴ Several studies using Canadian child welfare data over time have found that neglect⁴⁵ is reported as the main reason Indigenous children enter the child welfare system, which is associated with household and caregiver risk factors that stem from chronic family concerns, such as poverty, poor and unsafe housing, substance use, mental health issues, and social isolation.⁴⁶ The rate of “neglect only” investigations for First Nations children is six times higher than that of non-Aboriginal children.⁴⁷

There is also evidence that racial discrimination is a contributing factor to the over-representation of First Nations children in care. In a landmark 2016 decision, the Canadian Human Rights Tribunal (CHRT) found that the federal government

⁴³ Truth and Reconciliation Commission of Canada, *supra* note 19 at 1-3; Manitoba, Manitoba Review Committee on Indian and Metis Adoptions and Placements, *No Quiet Place* (Winnipeg: Manitoba Community Services, 1985) at 328-329, online: <http://digitalcollection.gov.mb.ca> (retrieved January 10, 2017).

⁴⁴ Melisa Brittain & Cindy Blackstock, *First Nations Child Poverty: A Literature Review and Analysis* (Ottawa: First Nations Children’s Action Research and Education Service, 2015).

⁴⁵ Neglect has been characterized as “often a failure to act in the child’s best interest, and carries a risk of cumulative harm over time.” In contrast, child abuse is often “a deliberate, harmful act that carries an immediate risk to the child’s well-being.” Aboriginal Children in Care Working Group, *Aboriginal Children in Care: Report to Canada’s Premiers July 2015* (Ottawa: Council of the Federation Secretariat, 2015) at 10.

⁴⁶ Nico Trocmé, Della Knocke & Cindy Blackstock, “Pathways to the Over-representation of Aboriginal Children in Canada’s Child Welfare System” (2004) December *Social Service Rev* 577; Nico Trocmé et al, *supra* note 36; Vandna Sinha, Stephen Ellenbogen & Nico Trocmé, “Substantiating Neglect of First Nations and Non-Aboriginal Children” (2013) 35:12 *Children and Youth Services Rev* 2080; Nico Trocmé et al, “Differentiating Between Child Protection and Family Support in the Canadian Child Welfare System’s Response to Intimate Partner Violence, Corporal Punishment, and Child Neglect” (2013) 48:2 *Int J of Psychology* 128; Cindy Blackstock, Nico Trocmé & Marilyn Bennet, “Child Maltreatment Investigations among Aboriginal and Non-Aboriginal Families in Canada” (2004) 10:8 *Violence Against Women* 901; Vandna Sinha et al, *Kiskisik Awasisak: Remember the Children. Understanding the Over-representation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2011).

⁴⁷ Vandna Sinha et al, *Kiskisik Awasisak, ibid.*

discriminated against First Nations children on reserve through its design, management, control and funding of child welfare services.⁴⁸ Among the discriminatory impacts were that the federal government did not provide adequate funding for prevention services, and it incentivized placing children in care by enabling reimbursement of certain costs.⁴⁹

The CHRT also affirmed that by reallocating money from housing and infrastructure on reserve to child welfare services, the federal government negatively impacts on-reserve social programs.⁵⁰ This creates a perverse cycle. Transferring funds from housing, water and sanitation to fill shortfalls in child welfare services heightens the risk of children needing these services in the first place, as poor housing is one of the key factors leading to First Nations children being removed from their families.⁵¹

Studies also support that child welfare agencies with higher numbers of Indigenous children in their caseloads are more likely to place children in care.⁵² This issue has been attributed in part to unequal access to resources available to these agencies.⁵³ In 2018, the federal government held an emergency meeting to discuss the crisis in Indigenous child welfare. A major issue is that the federal government has not fully

⁴⁸ *First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (CanLII) [*First Nations Child and Family Caring Society of Canada*]. At the time of writing, four compliance orders have been issued against the federal government. See also Auditor General of Canada, Chapter 4, *First Nations Child and Family Services Program – Indian and Northern Affairs Canada*, May 2008 (Ottawa: Office of the Auditor General of Canada, 2008) online: Office of the Auditor General of Canada www.oag-bvg.gc.ca/internet/English/parl_oag_200805_04_e_30700.html (retrieved October 12, 2017).

⁴⁹ *First Nations Child and Family Caring Society of Canada*, *ibid*, at para. 458.

⁵⁰ *First Nations Child and Family Caring Society of Canada*, *ibid*, at para. 390.

⁵¹ *First Nations Child and Family Caring Society of Canada*, *Canada Knows Better and Is Not Doing Better: Federal Government Documents Show Ongoing Discrimination Against First Nations Children Receiving Child Welfare Services on Reserve and In The Yukon* (Ottawa: First Nations Child and Family Caring Society of Canada, 2015) online: First Nations Child and Family Caring Society of Canada <https://fncaringsociety.com/publications/canada-knows-better-and-not-doing-better-federal-government-documents-show-ongoing> (retrieved January 16, 2018).

⁵² Barbara Fallon et al, "Placement Decisions and Disparities among Aboriginal Children: Further Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part A: Comparisons of the 1998 and 2003 Surveys" (2013) 37 *Child Abuse & Neglect* 47.

⁵³ Martin Chabot et al, "Exploring Alternate Specifications to Explain Agency-Level Effects in Placement Decisions Regarding Aboriginal Children: Further Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part B" (2013) 37 *Child Abuse & Neglect* 61.

complied with the CHRT's 2016 decision or the compliance orders issued since then. As an outcome of the meeting, the federal government promised to comply with the CHRT's ruling.⁵⁴

As well, a child's Indigenous identity or background may be a factor in CAS decision-making. Some studies have found that even after controlling for caregiver and poverty-related risk factors and other case characteristics, Indigenous children are significantly more likely to be transferred to ongoing child protection services and placed in care than White or non-Indigenous children.⁵⁵ Although the reasons for this are still being explored through research, bias in child welfare service decisions is a possible explanation.⁵⁶

Several comprehensive reports and studies document the underlying societal issues contributing to the over-representation of Indigenous children in child welfare.⁵⁷ These reports call on government to implement systemic solutions to address these issues. The TRC has urged all levels of government to, among other things, monitor and assess neglect investigations, provide Indigenous communities with adequate resources to keep families together, keep Indigenous children in culturally appropriate environments and make sure CAS workers receive training about the history and impacts of residential schools.⁵⁸ Indigenous peoples and the

⁵⁴ It stated it would develop a plan to address the over-representation of Indigenous children in child welfare. The plan is to include working to develop culturally appropriate prevention, early intervention and family re-unification services; and working to develop ways of better collecting and sharing data on the rates and the reasons for apprehending children. See Blair Crawford, "'Emergency' Meeting Tackles 'Crisis' in Indigenous Child Welfare" *Ottawa Citizen* (25 January 2018) online: ottawacitizen.com [ottawacitizen.com/ottawacitizen.com/news/national/emergency-meeting-tackles-crisis-in-indigenous-child-welfare](http://ottawacitizen.com/news/national/emergency-meeting-tackles-crisis-in-indigenous-child-welfare) (retrieved January 31, 2018). See Appendix D for the OHRC letter sent to Minister Jane Philpott regarding this issue.

⁵⁵ Kofi Antwi-Boasiako et al, *supra* note 12; Nico Trocme et al, *Understanding the Over-representation of First Nations Children in Canada's Child Welfare System: An Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS 2003)* (Toronto: Centre of Excellence for Child Welfare, 2005); Barbara Fallon et al, *supra* note 52.

⁵⁶ Barbara Fallon et al, *supra* note 52; Vandna Sinha, Ashleigh Delaye & Brittany Orav-Lakaski, "Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations Children in the Child Welfare System" *J of L & Social Policy* (in press).

⁵⁷ Nico Trocme et al, *supra* note 36; Melisa Brittain & Cindy Blackstock, *supra* note 44; Nico Trocme, Della Knocke & Cindy Blackstock, *supra* note 46; Vandna Sinha et al, *Kiskisik Awasisak*, *supra* note 46; Cindy Blackstock et al, *Reconciliation on Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families* (Ottawa: First Nations Child & Family Caring Society of Canada, 2006)

⁵⁸ Recommendation 1, Truth and Reconciliation Commission of Canada, *supra* note 19 at 319. Both the TRC and the Royal Commission on Aboriginal Peoples have called for the recognition of

Ontario government are currently working on a strategy to respond to the need for culturally-grounded, community-driven children's services.⁵⁹ To combat the crisis in Indigenous child welfare, the OHRC urges the Ontario government to fully implement the TRC's Calls to Action.

4.2. Black children

There is little published research on the disproportionality of Black children in the Canadian child welfare system.⁶⁰ In Ontario, it is clear that Black children are over-represented in the child welfare system relative to their presence in the child population, particularly in the decision to investigate.⁶¹ In 2013, approximately 8% of Black children in Ontario were the subject of a child welfare investigation for maltreatment, compared to 5% of White children.⁶² This may be driven by high numbers of referrals.⁶³

While disparities between Black and White children exist in later child welfare decisions, the role of race is not clearly understood. Several U.S. and Canadian studies have found that differences can generally be accounted for by controlling for the proportions of children who enter the system, or controlling for risk factors such as poverty.⁶⁴ However, others have found that racial disparities cannot be

Indigenous governments to govern their own affairs, including child welfare. Truth and Reconciliation Commission of Canada, *supra* note 19 at 629.

⁵⁹ Chiefs of Ontario, *Ontario Indigenous Child and Youth Strategy (OICYS)* (31 August, 2017) online: Chiefs of Ontario <https://chiefsofontario.wordpress.com/2017/08/31/ontario-indigenous-child-and-youth-strategy-oicys/> (retrieved January 8, 2017).

⁶⁰ Studies include Chantal Lavergne et al, *supra* note 37; see also L. Bernard & C. McAll, "The Over-representation of Haitian Children in Quebec Protective Services" (2004) 120 *Intervention* 117; Bryn King et al, *supra* note 6.

⁶¹ Bryn King et al, *supra* note 6. See also Chantal Lavergne et al, *supra* note 37. Barbara Fallon et al, *supra* note 3, found that in 2013, while White children were investigated at the rate of 54 per 1000 children, Black children were investigated at the rate of 75 per 1000 children.

⁶² Barbara Fallon et al, *supra* note 3.

⁶³ Bryn King et al, *supra* note 6.

⁶⁴ Some U.S. studies have found no race effects when controlling for risk factors such as poverty, maltreatment reason, single parenthood and other factors. See Stephanie Rivaux et al, "The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children" (2008) 87:2 *Child Welfare* 151. See, for example, Children's Aid Society of Toronto, *Addressing Disproportionality, Disparity and Discrimination in Child Welfare: Data on Services Provided to Black African Caribbean Canadian Families and Children* (Toronto: Children's Aid Society of Toronto, 2015) online: Children's Aid Society of Toronto www.torontocas.ca/?t=black-african-

fully explained by these factors.⁶⁵ Data from two Toronto-based CASs is notable. The Catholic Children’s Aid Society of Toronto (CCAS Toronto) found disparities that suggest racial differences in its agency’s decision-making in the rate of admissions into care.⁶⁶ Black children investigated were 28% more likely to be placed in care than White children investigated, although the reasons for these disparities were not explored.⁶⁷ Data collected by the CAS of Toronto also indicates that children in Black-led families are in care longer than children with parents from other racial groups.⁶⁸

The involvement of so many Black children in the child welfare system today has been linked to a history of racism against African Canadians, starting with slavery in Canada.⁶⁹ In its report on its Ontario-wide consultation with Black families, communities and advocates (*One Vision One Voice*), the Ontario Association of Children’s Aid Societies (OACAS) highlights how child welfare institutions in Canada evolved within a context of White supremacy and anti-Black racism. It says that these ideologies intertwined with child welfare policy and practice, and have resulted in the racial over-representations that have emerged over time.⁷⁰ The African Canadian Legal Clinic attributes over-representation in part to economic vulnerability and the over-monitoring of Black people due to racist stereotypes that are deeply embedded in society.⁷¹

caribbean-canadian-committee (retrieved January 16, 2017); Bryn King et al, *supra* note 6; Kofi Antwi-Boasiako et al, *supra* note 12; Elisabeth Bartholet, *supra* note 37; Fluke et al, *supra* note 37.

⁶⁵ Nicholas E. Kahn & Mary Eschelbach Hansen, “Measuring Racial Disparities in Foster Care Placement: A Case Study of Texas” (2017) 76 *Child and Youth Services Rev* 213; Stephanie Rivaux et al, *ibid*; John Fluke et al, *ibid*.

⁶⁶ Catholic Children’s Aid Society of Toronto, *supra* note 6.

⁶⁷ Compared to White children, Black children were substantially more likely to be referred to their agency. There were few differences between Black and White children with respect to verifying child protection concerns and transferring them to ongoing services. However, Black children were 28% more likely to be admitted into care than White children. Catholic Children’s Aid Society of Toronto, *supra* note 6.

⁶⁸ Children’s Aid Society of Toronto, *supra* note 64; Sandro Contenta, Laurie Monsebraaten & Jim Rankin, “Black Kids Stay Longest in Care, CAS Study Shows,” *The Toronto Star* (26 August 2015), online: thestar.com www.thestar.com/news/cas/2015/08/26/black-kids-stay-longest-in-care-cas-study-shows.html (retrieved October 5, 2017).

⁶⁹ African Canadian Legal Clinic, *Canada’s Forgotten Children: Written Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada* (July 2012) online: www.crin.org/en/docs/Canada_African%20Canadian%20Legal%20Clinic_CRC%20Report.pdf (retrieved October 12, 2017) at 11.

⁷⁰ OACAS, *supra* note 14.

⁷¹ African Canadian Legal Clinic, *supra* note 69.

Racism in systems such as employment, education and the criminal justice system has put Black people in severely disadvantaged positions in society.⁷² Historic and ongoing discrimination contributes to high levels of poverty among Black children and families in Canada.⁷³ Experiences of poverty and oppression may disproportionately increase Black families' needs, and in turn increase their involvement in the child welfare system.⁷⁴ In the U.S., child welfare research has in part attributed the overrepresentation of Black children in the system to the fact that many Black children are poor and the risk factors that relate to poverty.⁷⁵ A lack of resources available to support racialized families has also been linked to disproportionality.⁷⁶ Also, while more difficult to measure, racial bias at child welfare agencies has not been ruled out.⁷⁷

In *One Vision One Voice*, the OACAS explores the systemic forces that bring Black families into contact with child welfare authorities. It provides the perspectives of families and community members on how anti-Black racism operates at institutional and individual levels. It explores the impacts of child welfare involvement on Black families and makes recommendations on how to integrate an anti-Black racism lens throughout the child welfare system. The OHRC supports applying such a lens to serve Black families better, and encourages government and other agencies to implement

⁷² *Report of the Working Group of Experts on People of African Descent on its Mission to Canada*, UNGAOR, 36th Sess, UN Doc A/HRC/36/60/Add.1 (2017) online: United Nations <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/239/60/PDF/G1723960.pdf?OpenElement> (retrieved October 17, 2017) [*UN Working Group Report*]; Frances Henry & Carol Tator, *supra* note 10.

⁷³ UN Working Group Report, *ibid*. In 2006, Black people in Canada were more likely to live below the poverty line (25%) compared to Canada's overall population (11%). National Council of Welfare, *Snapshot of Racialized Poverty in Canada* (Ottawa: National Council of Welfare, 2012); Statistics Canada, 2010, *Visual census, 2006 Census*. Ottawa. Released December 7, 2010. www12.statcan.gc.ca/census-recensement/2006/dp-pd/fs-fi/index.cfm?Lang=ENG&TOPIC_ID=11&PRCODE=01 (accessed October 13, 2017).

⁷⁴ John Fluke et al, *supra* note 37.

⁷⁵ Kofi Antwi-Boasiako et al, *supra* note 12; Elizabeth Bartholet et al, *supra* note 37; John Fluke et al, *ibid*.

⁷⁶ OACAS, *supra* note 14; Fluke et al, *ibid*.

⁷⁷ See Chantal Lavergne et al, *supra* note 37; Alan J. Detlaff et al, "Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare" (2011) 33:9 *Children & Youth Services Rev* 1630; Stephanie Rivaux et al, *supra* note 64; Nicholas E. Kahn & Mary Eschelbach Hansen, *supra* note 65.

these recommendations. The OHRC also supports the efforts of the Anti-Racism Directorate, which is partnering with the CAS of Toronto on various initiatives to address anti-Black racism.⁷⁸

4.3. Factors that may lead to discrimination

Study and debate continue on the extent that racial disproportionality in child welfare can be attributed to discriminatory bias in policies or decision-making, differences in case characteristics, structural factors or some combination. Canadian studies have been limited in their ability to measure bias.⁷⁹ However, U.S. empirical research and qualitative studies show how agency- or worker-level bias may play out in child welfare.

Research suggests that professionals in the community – such as school and medical staff – over-report racialized families to child welfare authorities and that this may be linked to bias.⁸⁰ For example, a U.S. study found that at one hospital, staff were more likely to report racialized families for suspected abuse than White families, even after controlling for the likelihood of abusive injury.⁸¹

⁷⁸ Government of Ontario, *Anti-Black Racism Strategy* (Toronto: Queen’s Printer for Ontario, 2017) online: Government of Ontario www.ontario.ca/page/ontarios-anti-black-racism-strategy (retrieved February 27, 2018).

⁷⁹ Canadian studies largely use worker-reported risk factor data, which is not independently verified, and could be influenced by implicit bias. See Bryn King et al, *supra* note 6; Vandna Sinha, Ashleigh Delaye & Brittany Orav-Lakaski, *supra* note 56.

⁸⁰ Susan Chibnall et al, *Children of Color in the Child Welfare System: Perspectives from the Child Welfare Community* (Washington, DC: U.S. Department of Health and Human Services, Government Printing Office, 2003) at ii. Available online www.childwelfare.gov/pubPDFs/children.pdf (retrieved January 16, 2018); Stephanie Rivaux et al, *supra* note 64; Bryn King et al, *supra* note 6; Wendy Lane et al, “Racial Differences in the Evaluation of Pediatric Fractures for Abuse” (2002) 288:13 J Am Medical Association 1603. Also see Jim Rankin, “Single Black Mom Battles School over Calls to CAS” (25 February 2017) *The Toronto Star*, February 25, 2017, online: thestar.com www.thestar.com/news/insight/2017/02/25/single-black-mom-battles-school-over-calls-to-cas.html (retrieved January 16, 2018) and OACAS, *supra* note 14 at 60-61.

⁸¹ Wendy Lane et al, *ibid.*

The OHRC is also concerned that negative assumptions about poverty, race and risk could lead to child welfare referrals. In the U.S., one report identifies that professionals may refer racialized families to child welfare authorities for neglect because they confuse poverty with neglect, or misinterpret cultural differences as neglect.⁸²

Researchers and others also cite policies and system-level practices as contributing to disparate treatment. Researchers have criticized risk assessment tools, standards and service delivery practices because they reflect White, Western, Christian notions of acceptable child rearing, and may not be applicable to Indigenous and Black families.⁸³ In the OHRC's consultation on racial profiling, we heard that tools and standards, coupled with individual workers' conscious or unconscious racial bias, may lead to incorrect assumptions about the level of risk children are exposed to.

In one example, consultation participants told us that standards around the number of children allowed per bedroom are too onerous for Indigenous families living in poverty, and may not reflect a real risk to children. We were told that these standards can affect what is seen as acceptable in a home and contribute to CAS decisions to intervene.

In another example, some methods of drug and alcohol testing may negatively affect Indigenous and racialized parents. Hair tests used on dark hair have been

⁸² Child Welfare Information Gateway, *Addressing Racial Disproportionality in Child Welfare* (Washington, DC: U.S. Department of Health and Human Services Administration for Children and Families, 2011). Research has shown significantly higher levels of negative attitudes towards individuals and families who are poor in comparison to those in the middle class. Predominantly held negative beliefs include that people who are poor are lazy, uneducated, unmotivated, have too many children, or are more likely to use alcohol or other substances in excess. Catherine Cozzarelli, Anna V. Wilkinson & Michael J. Tagler, "Attitudes towards the Poor and Attributions for Poverty" (2001) 57 *J of Social Issues* 207. See also Ontario Human Rights Commission, *Taking the Pulse: People's opinions on human rights in Ontario* (Toronto: Queen's Printer for Ontario, 2017) online: OHRC www.ohrc.on.ca/en/taking-the-pulse-peoples-opinions-human-rights-ontario at 30-31.

⁸³ Jennifer Clarke, "The Challenges of Child Welfare Involvement for Afro-Caribbean Families in Toronto" (2011) 33 *Children & Youth Services Rev* 274; Vandna Sinha, Ashleigh Delaye & Brittany Orav-Lakaski, *supra* note 56; Nicole Bonnie & Gordon Pon, "Critical Well Being in Child Welfare: A Journey Towards Creating a New Social Contract for Black Communities" in S. Strega & J. Carrière, eds., *Walking This Path Together*, 2nd ed. (Halifax: Fernwood Press, 2015); Cindy Blackstock, "After the Apology: Why Are There So Many First Nations Children Still in Foster Care?: A Summary of the Research on Ethnic-Over-representation and Structural Bias" (2009) 34:1 *Children Australia* 22; Ontario Human Rights Commission, *Under Suspicion*, *supra* note 14.

found to lead to biased results.⁸⁴ However, testing was often relied on without question by CASs and courts in Ontario and led to negative conclusions about caregivers' ability to parent.⁸⁵

Concerns have also been raised about the culture of child welfare agencies. In one Ontario study, racialized child welfare workers characterized the culture of the agencies they worked at as "White-normed environments" where workplace racism exists and stereotypes about Black service users are prevalent.⁸⁶

Race or Indigenous identity may influence individual decision-making by child welfare workers.⁸⁷ Workers may perceive a case differently based on the family's race or ancestry,⁸⁸ resulting in assessing risk differently⁸⁹ or taking a more extreme action (such as apprehending a racialized child).⁹⁰ Child welfare workers, who are often White,⁹¹ may be less likely to relate to Indigenous or racialized clients, see their situations as nuanced, or give them the benefit of the doubt.⁹² They may hold

⁸⁴ Motherisk Commission, *supra* note 40 at 13. The OHRC supports the recommendations of the Motherisk Commission as a way to address the over-representation of Indigenous and Black children in child welfare, and ameliorate the harm done to children, families and communities by the Motherisk program. See our recommendations in section 8.

⁸⁵ Motherisk Commission, *ibid* at ix, 110.

⁸⁶ Kevin Gosine & Gordon Pon, "On the Front Lines: The Voices and Experiences of Racialized Child Welfare Workers in Toronto, Canada" (2011) 22 *J of Progressive Human Services*, 135 at 142.

⁸⁷ One U.S. study found that even when poverty and other risk factors were controlled for, race influenced the decisions of child welfare workers to provide services and remove children. The author suggests that disproportionality can be explained by a lower risk threshold used to make intrusive case decisions (such as removing children) about African Americans compared to Anglo Americans. Stephanie Rivaux et al, *supra* note 64. See also Keva M. Miller, Katharine Cahn & E. Roberto Orellana, "Dynamics that Contribute to Racial Disproportionality and Disparity: Perspectives from Child Welfare Professionals, Community Partners, and Families" (2012) 34 *Children and Youth Services Rev* 2201 at 2204; Nicholas E. Kahn & Mary Eschelbach Hansen, *supra* note 65; *D.B. v. Children's Aid Society of Oxford County and Family and Children's Services of Guelph and Wellington County*, 2013 CFSRB 41 (CanLII) [*D.B.*]; Keva M. Miller et al, "Individual and Systemic/Structural Bias in Child Welfare Decision Making: Implications for Children and Families of Color" (2013) *Children and Youth Services Rev* 1634

⁸⁸ Vandna Sinha, Ashleigh Delaye & Brittany Orav-Lakaski, *supra* note 56.

⁸⁹ Sheila Ards et al, "Racialized Perceptions and Child Neglect" (2012) 34 *Children & Youth Services Rev* 1480.

⁹⁰ Alan J. Detlaff et al, *supra* note 77; Stephanie Rivaux et al, *supra* note 64.

⁹¹ Kristen Lwin et al, "A Profile of Child Welfare Workers in Canada in 2008" (2015) *Canadian Child Welfare Research Portal* 1.

⁹² Keva M. Miller, Katharine Cahn & E. Roberto Orellana, *supra* note 87.

negative stereotypes about Indigenous and Black families.⁹³ They may privilege White, middle-class communication patterns,⁹⁴ hold racialized families to changing expectations,⁹⁵ and be more likely to negatively interpret the frustration and anger of these families as “a lack of compliance.”⁹⁶ The OHRC is concerned that where these attitudes and behaviours exist, they could lead to decisions that adversely affect Indigenous and Black children and their families.

4.4. Impacts of being taken into care

While removing children from their families to protect them may be necessary in some cases, there are many negative and long-term effects associated with being placed in care. These include higher rates of youth homelessness,⁹⁷ lower levels of post-secondary education,⁹⁸ low income,⁹⁹ high unemployment,¹⁰⁰ and increased prevalence of chronic health problems for children.¹⁰¹ Compared to youth from the

⁹³ Ontario Human Rights Commission, *Under Suspicion*, *supra* note 14; Gordon Pon et al, “Racial Profiling in Child Welfare: The Need for a Black CAS” (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016). In *D.B.*, the Child and Family Services Review Board (CFSRB) found that the Oxford children’s aid society worker’s conduct, which included negative racial comments to the applicant about African Canadians, was evidence of her not having heard the applicant when making decisions about how to approach the information she received from her visit to the home and from the female foster child. The CFSRB determined that “[a]s a worker in a position of power, the Oxford Worker, in the context of her perceptions about African Canadians, shut the Applicant out of the decision making process and made no attempts to communicate with her about the decision to investigate the condition of the home” (at para 42); Kevin Gosine & Gordon Pon, *supra* note 86.

⁹⁴ Jane Marie Marshall & Wendy L. Haight, “Understanding Racial Disproportionality Affecting African American Youth who Cross Over from the Child Welfare to the Juvenile Justice System: Communication, Power, Race and Social Class” (2014) *Children and Youth Services Rev* 82.

⁹⁵ Keva M. Miller, Katharine Cahn & E. Roberto Orellana, *supra* note 87.

⁹⁶ Gordon Pon et al, *supra* note 9; Keva M. Miller, Katharine Cahn & E. Roberto Orellana, *ibid*.

⁹⁷ Stephen Gaetz et al, *Without a Home: The National Youth Homeless Survey* (Toronto: Canadian Observatory on Homelessness Press, 2016); Naomi Nichols et al, *Child Welfare and Youth Homelessness in Canada: A Proposal for Action* (Toronto: Canadian Observatory on Homelessness Press, 2017).

⁹⁸ Mark E. Courtney et al, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26* (Chicago: Chapin Hall, 2011); Peter J. Pecora et al, “Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study” (2006) 28 *Children and Youth Services Rev* 1459.

⁹⁹ Mark E. Courtney et al, *ibid*; Peter J. Pecora et al, *ibid*.

¹⁰⁰ Mark E. Courtney et al, *ibid*.

¹⁰¹ Sandra H. Jee et al, “Factors Associated with Chronic Conditions among Children in Foster Care” (2006) 17:2 *J of Health Care for the Poor and Underserved* 328.

general population, youth from the child welfare system are also at much greater risk for becoming involved with the juvenile criminal justice system,¹⁰² a process referred to as the “child-welfare-to-prison pipeline.” Because of racial disparities in the child welfare system, Indigenous and Black children may be disproportionately likely to experience these negative effects.¹⁰³

The Law Society of Ontario’s The Action Group on Access to Justice (TAG) is working across sectors with Indigenous and non-Indigenous advocates and academics to look at the over-representation of Indigenous children and youth in the child welfare system. Consultation participants identified many serious and negative effects that being taken into care can have on Indigenous children and youth. These include:

- Long-term unresolved trauma
- Permanent mistrust of institutions when one has spent one’s childhood in a series of foster homes
- Deep feelings of cultural disconnection and loss of identity because of a lack of Indigenous cultural education, particularly if children are placed in non-Indigenous homes,¹⁰⁴ which most are.¹⁰⁵

They also indicated that a lack of resources available to address the root causes of children in care, such as addiction and poverty, contributes to cycles of entire families in care across multiple generations.¹⁰⁶ When children are placed in care away from home because culturally appropriate services are not funded or available in their communities, it compounds inequality for Indigenous families, who otherwise could have been supported to safely care for their children at home.¹⁰⁷

¹⁰² Joseph Ryan & Mark Testa, “Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability” (2005) 27 *Youth & Child Services Rev* 227 at 245.

¹⁰³ Nicholas E. Kahn & Mary Eschelbach Hansen, *supra* note 65.

¹⁰⁴ The Action Group on Access to Justice, Law Society of Ontario [Formerly Upper Canada], *Indigenous Justice: Examining the Over-Representation of Indigenous Children and Youth: Exploratory Report, August 2016* (Toronto: Law Society of Upper Canada, 2016) online: Law Society of Ontario theactiongroup.ca/2016/08/indigenous-justice-examining-the-over-representation-of-indigenous-children-and-youth-exploratory-report/ (retrieved July 10, 2017) at 14. Nichols et al report that, “When [Indigenous] children are removed from their homes, fewer than half (44%) are placed in homes where at least one caregiver is Indigenous.” Naomi Nichols et al, *supra* note 97 at 8.

¹⁰⁵ Naomi Nichols et al, *supra* note 97.

¹⁰⁶ The Action Group on Access to Justice, Law Society of Ontario, *supra* note 104.

¹⁰⁷ See, for example, The Canadian Press, “First Nations Children Still Taken from Parents” *CBC news* (2 August 2011), online: CBC News www.cbc.ca/news/politics/first-nations-children-still-taken-from-parents-1.1065255 (retrieved September 22, 2017).

In *One Vision One Voice*, the OACAS documents the specific impacts that being placed in care have on Black children and families. Participants talked about how being removed for even a short period of time can damage the child-parent relationship. They raised concerns that repeatedly moving African Canadian children from placement to placement can affect the ability of children and youth to form attachments and become well-adjusted adults. They spoke of how the trauma of being removed from one's family can be made worse when African Canadian children and youth are placed with non-Black foster families and away from their communities for long periods of time, as they may experience feelings of alienation from their family and community and a loss of connection to their culture and identity.¹⁰⁸

4.5. Human rights-based data collection in the child welfare system

At the time we started this inquiry, there were significant gaps in the government's approach to human rights-based, and particularly race-based, data collection by child welfare agencies. There was no specific legislation¹⁰⁹ or policy directive¹¹⁰ that required CASs to collect data based on racialized or Indigenous identity across their service decisions or report on it publically. Collecting this type of data was not laid out as a child protection standard, which is a baseline level of performance for CASs in their delivery of child protection.

There has been some progress since then, in part because of the government's efforts to address concerns about racial disproportionality in child welfare¹¹¹ and systemic racism more broadly.

¹⁰⁸ OACAS, *supra* note 14, at 74-75.

¹⁰⁹ This report refers to the requirements of the *CFSA* and not the *CYFSA*, as the *CFSA* applied to the time period for which we requested data from CASs. To provide appropriate services to "Indian" and "native" children, and to notify bands and "native" communities, as required under the *CFSA*, CASs need to be able to identify whether a child is eligible for status under the federal *Indian Act* or is "native." However, the *CFSA* does not explicitly lay out the requirement to collect this information or record it in a systematic way. The *CFSA* also requires a court to determine whether a child is an "Indian" or a "native person" prior to determining whether that child is need of protection. *CFSA*, *supra* note 28 s 47(2)(c).

¹¹⁰ The exception is a policy directive that requires CASs to use an assessment tool with children who have spent 12 consecutive months in care. The assessment tool asks questions about the child's First Nations status, ethnicity and religious/spiritual affiliation. Ministry of Children and Youth Services, *Policy Directive 001-09* (May 1, 2009) (Provided to the OHRC).

¹¹¹ Laurie Monsebraaten, Sandro Contenta & Jim Rankin, "Ontario Children's Minister Seeks Racial Data on Kids in Care" *The Toronto Star* (29 September 2016) online: thestar.com

In the spring of 2017, the government passed the *Child, Youth and Family Services Act (CYFSA)*, which permits the Minister to require CASs to collect, use and disclose to the Ministry of Children and Youth Services (MCYS) personal information, with privacy safeguards in place.¹¹² MCYS is currently developing a policy directive that will require CASs to collect personal information, including race-based data. MCYS has also changed its *Child Protection Standards*, which now indicate that CASs should collect human-rights based data – including on race and whether the child is Indigenous – at the point of referral.¹¹³

MCYS is also developing an identity-based data collection standard for government and government-funded organizations to collect clients' data on multiple *Code* grounds in a uniform way. The underlying purpose of this voluntary standard is to address disparity and outcomes among different population groups.

This work coincides with the Anti-Racism Directorate's (ARD) work on race-based data collection. As required by the *Anti-Racism Act* and as part of its Anti-Racism Strategy, the ARD is developing disaggregated race data collection standards and guidelines for government-funded organizations.¹¹⁴ In 2017, the OHRC urged the government to develop a regulation that requires public sector organizations - including CASs - to implement these data standards.¹¹⁵ These standards are, as yet, not mandatory.¹¹⁶

www.thestar.com/news/canada/2016/09/29/ontario-childrens-minister-seeks-racial-data-on-kids-in-care.html (retrieved October 12, 2017). See also Ministry of Children and Youth Services, News Release, "Ontario Strengthening Child Welfare, Improving Outcomes for Youth" (8 December 2016) online: Government of Ontario news.ontario.ca/mcys/en/2016/12/ontario-strengthening-child-welfare-improving-outcomes-for-youth.html MCYS mandate letter (retrieved October 12, 2017).

¹¹² *CYFSA*, *supra* note 28.

¹¹³ Ministry of Children and Youth Services, *Ontario Child Protection Standards (2016)* (Toronto, Government of Ontario, 2016) online: Ministry of Children and Youth Services, www.children.gov.on.ca/htdocs/English/professionals/childwelfare/protection-standards/index.aspx (retrieved September 8, 2017) at 21.

¹¹⁴ *Anti-Racism Act*, SO 2017, c 15, s 6(1); Ontario Anti-Racism Directorate, *A Better Way Forward: Ontario's 3-Year Anti-Racism Strategic Plan* (Toronto: Queen's Printer for Ontario, 2017) online: Government of Ontario www.ontario.ca/page/better-way-forward-ontarios-3-year-anti-racism-strategic-plan (retrieved August 15, 2017).

¹¹⁵ Chief Commissioner Renu Mandhane, letter to the Honourable Michael Coteau (20 September 2017) online: Ontario Human Rights Commission www.ohrc.on.ca/en/re-requiring-public-sector-organizations-collect-race-based-data.

¹¹⁶ The ARD standard is expected to be incorporated into the MCYS's identity-based data collection standard. Interview of MCYS representative (10 July 2017) Ontario Human Rights Commission.

All of these initiatives, if fulfilled, are an important step forward and would fill a significant gap. However, to be effective, they must be put into action. As they have yet to be put in place, we will not know for some time whether they translate into CASs implementing appropriate procedures to collect, analyze and report data based on racialized or Indigenous identity and other human rights-based data.

Currently, use of the new data collection provisions in the *CYFSA* is not mandatory and left to the discretion of the Minister of the day. In its submission to government on proposed amendments to the *Child and Family Services Act (CFSA)*, the OHRC emphasized that data collection should be made a mandatory requirement in law, to make sure government and organizations have a sustained commitment to collect human rights-based data.¹¹⁷

To ensure compliance and continuity over time, CASs should be required by law to collect, analyze and report on human rights-based data, including race-based data. Data should be collected on important service decisions, such as decisions to investigate and place children into care.

5. Results

This section presents the OHRC's observations and findings on:

- CASs' data collection practices
- Whether Indigenous and Black children are disproportionately represented among children admitted into care at various CASs.

¹¹⁷ Ontario Human Rights Commission, *Submission Regarding Bill 89, Supporting Children, Youth and Families Act, 2017, April 3 2017 (2017) [Bill 89 Submission]*. Online: Ontario Human Rights Commission www.ohrc.on.ca/en/submission-regarding-bill-89-supporting-children-youth-and-families-act-2017. The OHRC also recommended that data collection and public reporting by MCYS include information about Indigenous, Black and other racialized children and youth who are in care. These recommendations are not reflected in the *CYFSA*. See Recommendations 2, 4 & 15 in Ontario Human Rights Commission, *Ontario Human Rights Submission to the Ministry of Children and Youth Services Review of the Child and Family Services Act, December 2014 (2014)*, online: Ontario Human Rights Commission www.ohrc.on.ca/en/ohrc-submission-ministry-children-and-youth-services-review-child-and-family-services-act.

5.1. CASs' data collection practices

The OHRC examined the data collection practices of the 38 mainstream (non-Indigenous) CASs in Ontario. Overall, we found that most collect various types of human rights-based demographic data, including some data based on Indigenous or racialized identity, across different service decisions (e.g. referrals, decision to investigate, referrals to ongoing service, admissions into care, time in care). Data on age and sex is consistently collected across service decisions.

The best and most complete data is collected by agencies that have a deliberate, holistic approach to data collection, grounded in attempting to understand the needs of the marginalized communities they serve. These agencies are concerned about disproportionality and disparities, have dedicated the resources to do these analyses and have trained their staff. Among notable agencies using this approach are Catholic CAS of Toronto, CAS of Toronto, and Peel CAS.

We looked at CASs' data collection practices generally and their collection of race-based data in particular. A key observation is that there are large inconsistencies and gaps in the human rights-based demographic data collected by most CASs, reflected by variations in their:

- Data collection policies, protocols, forms, systems, and training
- Data collection practices, including the amount of data they collect, how they determine race, and the race-based categories they use.

5.1.1. Data collection policies, protocols, forms, systems and training

Policies, protocols and forms

Although most CASs collected race-based data, it appears that, across the sector, they rarely asked about racial background or Indigenous identity in the same service decisions in the same way.

In addition, it is not clear that all CASs have policies and procedures that specifically direct staff to collect race-based data, although some do.¹¹⁸ The policies and

¹¹⁸ Catholic Children's Aid Society of Toronto, Children's Aid Society of Hamilton, Children's Aid Society of the Districts of Sudbury and Manitoulin, Children's Aid Society of Halton, Highland Shores Children's Aid, Peel Children's Aid Society, and Simcoe Muskoka Family Connexions are examples. One CAS indicated that it does not collect race-based data as a matter of service philosophy (Jewish Family and Child).

protocols we saw make important statements about making sure the agency provides appropriate services to Indigenous and racialized clients, which makes it necessary to collect data based on racialized or Indigenous identity.

Data management systems

CASs across the province use six or seven different data management systems, leading to widely inconsistent collection and reporting on human rights-based data. Many CASs have switched to the Child Protection Information Network (CPIN), the integrated data management system that will create a consistent approach to collecting child welfare related information across the province.¹¹⁹ However, during our inquiry, many CASs raised concerns about CPIN, including that it was not set up at that time to collect human rights-based data to match Statistics Canada categories.

Training

Several CASs said that they provide training to staff on collecting human rights and race-based data. However, others acknowledged that they need to train child protection workers on how to consistently collect and record this information. We heard that training can help to overcome workers' personal discomfort when asking questions about racialized or Indigenous identity. We also heard that CASs need to adequately explain to child protection workers why the data is important, so they will be more inclined to collect it.

Peel CAS's fact sheet, "Collecting Race Based Data," is one example of a resource that aims to help child protection workers collect race-based data. It outlines key terms such as "race" and "culture," explains why it is important to collect race-based data, and gives practical tips on how to navigate challenges when engaging families on identity.¹²⁰

¹¹⁹ For more information about CPIN, see OACAS, *CPIN Ready to Launch at Five More Children's Aid Societies* (April 13, 2016) online: OACAS www.oacas.org/2016/04/cpin-ready-to-launch-at-five-more-childrens-aid-societies/ (retrieved July 17, 2017).

¹²⁰ Peel Children's Aid Society, *Collecting Race Based Data* (Mississauga: Peel Children's Aid Society, 2016) online: Peel Children's Aid Society www.peelcas.org/documents/1079p_Becoming%20an%20Ally%20-%20Collecting%20Race%20Based%20Data%20for%20web%202017.pdf (retrieved October 16, 2017).

5.1.2. Data collection practices

Missing/unknown data

Many CASs were missing large amounts (at least 20% or more) of race-based data in their service decisions (referrals, opening of cases for investigation, opening of ongoing protection cases, admissions into care, days in care, discharge, *etc.*), or the racialized or Indigenous identity of the child was marked as “unknown.” With over 20% missing or unknown data, CASs cannot do the proper analysis to assess if racial disparities exist across their different service decisions. In particular, we reviewed the amount of missing/unknown race-based data in referrals, decisions to open investigation cases and admissions into care.

Referral to CAS: Almost 60% of mainstream CASs (22 of 38) either did not collect race-based data on children referred to their services, or more than half of the racialized or Indigenous identity data was missing or unknown.

Missing/unknown data in referrals may happen because cases may be closed without an investigation, and in these cases, the Indigenous or racialized identity of the child may not be recorded.¹²¹ However, without an understanding of who is being referred to the agency, it is difficult to understand if children of certain Indigenous or racial groups are more likely to be referred and by whom, and if there is potential bias in these referrals.¹²² The agency can also use this information as a baseline for comparison to its other service decisions.

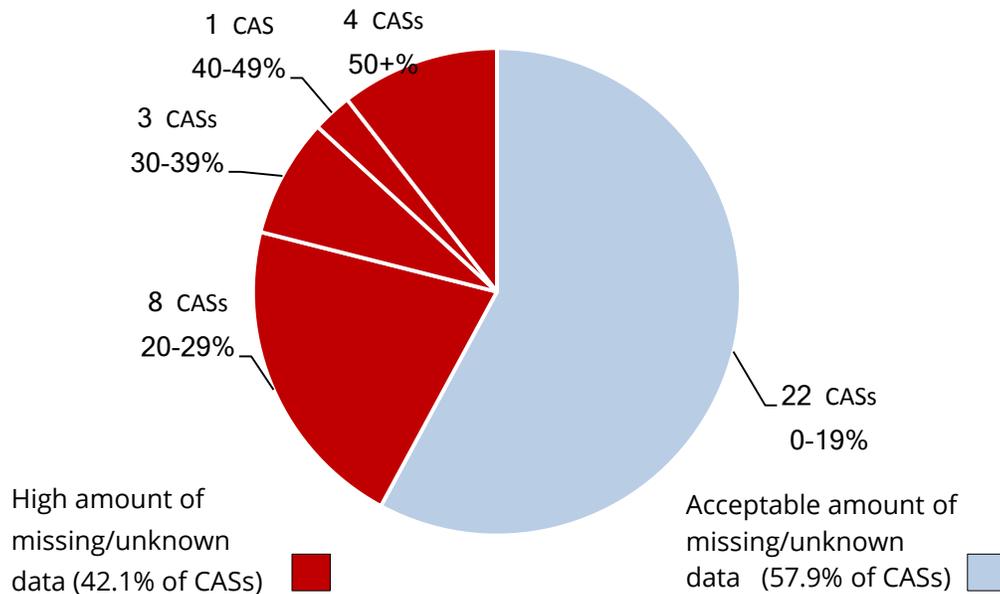
Decisions to investigate: We were told that as a child moves through the stages of the child welfare system, there is more opportunity to accurately record race-based data. Even still, 50% of mainstream CASs' (19 of 38) race-based data was missing or unknown in more than half of cases at the investigation stage.

Children admitted into care: A large minority (42.1% or 16 of 38) were missing race-based data or were unaware of children's Indigenous identities or racial backgrounds for more than one in five children admitted into their care (see Figure 1).

¹²¹ Catholic Children's Aid Society of Toronto, *Service to African-Descent Families and Children: A Review of the Data* (Toronto, Catholic Children's Aid Society of Toronto, 2016) (Presentation provided to the Ontario Human Rights Commission as part of its submission to the OHRC's inquiry, 1 June, 2016) at 17.

¹²² For example, see Bryn King et al, *supra* note 6.

Figure 1. Percentage of admissions data where children’s Indigenous identities or racial backgrounds were missing or unknown, as submitted by 38 mainstream CASs, 2012-2015



Note: This figure includes data from Kawartha-Haliburton CAS, which submitted the numbers of children in care, not admitted to care, during this time period.

Determining race or Indigenous identity

There appear to be large differences between and within CASs in how they determined children’s racial backgrounds or Indigenous identities. Most CASs we asked said that they used a combination of methods – including worker identification, self-identification, family identification and other sources, such as information from the child’s file. A minority of CASs had a more coherent and consistent approach – such as emphasizing self-identification first, and then family identification where self-identification is not possible.

Indigenous identity and race-based categories

The names of Indigenous identity and race-based categories varied substantially between CASs. Several did not correspond with existing Statistics Canada categories used in the National Household Survey (NHS). Although almost all mainstream CASs (92.1%) collected some data on Indigenous, White or Black children admitted into care, fewer collected data on children of other racial

backgrounds, or the categories used to describe children were vague and not meaningful (e.g. “Other,” “Asian”). Many identified a child’s multiple identities when a child is biracial (e.g. Black/White), but many did not. Some CASs used terms that are outdated and may be perceived as offensive, such as “Eskimo,” “Mulatto,” “Gypsy” and “Native.” Some used the category “Canadian” only for White children and not for Indigenous children or children of other racial backgrounds, and two used religious backgrounds (“Jewish” and “Muslim”) as racial background categories.

Importantly, there were inconsistencies in how CASs record children’s Indigenous identities. Several disaggregated Indigenous children’s backgrounds into status First Nations and non-status First Nations, Métis and Inuit, but these categories were inconsistent across CASs.

5.2. Admissions into care

To understand whether Indigenous and Black children are over-represented in admissions into care, we conducted our analysis of the data provided by 27 mainstream CASs. These agencies provided enough race-based data to do the analysis; however, the data still has limitations (for a full list, see Appendix A).

The data shows that Indigenous and Black children are over-represented in admissions into care at many CASs across the province. The complete data table laying out the results for 27 CASs is available on the OHRC’s website at www.ohrc.on.ca. The website also includes interactive maps presenting the results for all 38 mainstream CASs in Ontario.

The following tables provide a measure of disproportionality, called the “disproportionality indicator.” It is described in further detail in Appendix A. The disproportionality indicator expresses the number of times children of a racial group were admitted into care compared to what would be expected based on their representation in the region’s child population. A value greater than 1.0 indicates over-representation; a value equal to 1.0 represents proportionality; and a value less than 1.0 indicates under-representation.

We used a separate calculation (described further in Appendix A) to determine the threshold at which the data represents either disproportionately high or disproportionately low incidences of admissions into care. This data is noteworthy and of sufficient concern to act upon. In the following tables, we only report data that met this threshold.

Table 1. Disproportionately high or low incidences of Indigenous children admitted into care (January 1, 2012-December 31, 2015), relative to their proportion in the population (age 0 – 15), by agency

#	Agency	Disproportionality indicator
1	CAS of the United Counties of Stormont, Dundas & Glengarry	1.3
2	Highland Shores Children's Aid	1.3
3	Catholic CAS of Toronto	1.8*
4	Chatham-Kent Children's Services	1.6
5	CAS of the Districts of Sudbury and Manitoulin	1.9
6	Bruce Grey Child & Family Services (C&FS)	2.0*
7	Kawartha-Haliburton CAS**	2.1
8	CAS Nipissing and Parry Sound	2.1
9	CAS of Haldimand & Norfolk	2.2*
10	CAS of Algoma	2.3
11	Brant Family and Children's Service (F&CS)	2.4
12	North Eastern Ontario F&CS	2.5
13	F&CS Niagara	2.5
14	Windsor-Essex CAS	2.9
15	CAS of Hamilton	3.2
16	F&CS of the Waterloo Region	3.5
17	Peel CAS	3.9*
18	F&CS of Guelph and Wellington County	4.2*
19	Sarnia-Lambton CAS	4.2
20	Catholic CAS of Hamilton	4.6*
21	CAS of London & Middlesex	5.6
22	York Region CAS	5.7*
23	CAS of Ottawa	5.7
24	Durham CAS	6.1
25	Dufferin C&FS	8.6*

Notes: Disproportionality indicators have been rounded to the nearest tenth.

*Indicates higher variability and potentially less reliability of the disproportionality indicator, due to relatively small numbers of Indigenous children admitted into care and small proportions of Indigenous children in the population. **Data reflects children admitted into care and children in care between January 1, 2012 and December 31, 2015.

At 25 of the 27 CASs (92.6%) for which we had adequate data, Indigenous children were over-represented in admissions into care. Overall, the proportion of Indigenous children admitted into care was 2.6 times higher than their proportion in the child population.¹²³ At Halton CAS, there were fewer than 10 Indigenous children in care and the data was suppressed. At CAS Toronto, the representation was relatively proportional and the disproportionality indicator was not reported.

For more information on the representation of Indigenous children admitted into care in different Ontario regions, see the interactive map at www.ohrc.on.ca.

Table 2. Disproportionately high or low incidences of Black children admitted into care (January 1, 2012 – December 31, 2015), relative to their proportion in the population (age 0 – 15), by agency

Number	Agency	Disproportionality indicator
1	CAS of Ottawa**	0.7
2	Durham CAS	1.7
3	Windsor-Essex CAS**	1.7
4	York Region CAS	2.0
5	Peel CAS	2.4
6	CAS of Toronto	2.7
7	Catholic CAS of Toronto	4.5
8	Catholic CAS of Hamilton	4.6*
9	Halton CAS	4.8*

Notes: Disproportionality indicators have been rounded to the nearest tenth.

*Indicates higher variability and potentially less reliability of the disproportionality indicator, due to relatively small numbers of Black children admitted into care and small proportions of Black children in the population. **Data collected on ethnicity, not race. Estimate for Black children derived from this data.

At eight of the 27 CASs (29.6%), Black children were over-represented in admissions into care, and at one agency (CAS of Ottawa) they were under-represented (3.7%). At four agencies, the proportion of Black children admitted was relatively proportional and the data was not reported. Based on these 13 CASs, the

¹²³ Based on all CASs where the data was not suppressed (n=26).

proportion of Black children admitted into care was 2.2 times higher than their proportion in the child population. At the other 14 CASs, there were under 10 Black children admitted into care and the data was suppressed, or data on Black children was not collected or available.

For more information on the representation of Black children admitted into care in different Ontario regions, see the interactive map at www.ohrc.on.ca.

Table 3. Disproportionately high or low incidences of White children admitted into care (January 1, 2012 – December 31, 2015), relative to their proportion in the population (age 0 – 15), by agency

Number	Agency	Disproportionality indicator
1	CAS of the Districts of Sudbury and Manitoulin	0.5
2	F&CS of the Waterloo Region	0.6
3	Highland Shores Children’s Aid	0.6
4	F&CS of Niagara	0.6
5	Brant F&CS	0.6
6	CAS of Haldimand & Norfolk	0.6
7	Chatham-Kent Children’s Services	0.7
8	CAS of London & Middlesex	0.7
9	CAS of Algoma	0.7
10	Catholic CAS of Hamilton	0.7
11	Bruce Grey C&FS	0.7
12	Halton CAS	0.7
13	Sarnia-Lambton CAS	0.8
14	CAS of Hamilton	0.8
15	North Eastern Ontario F&CS	0.8
16	York Region CAS	1.2

Note: Disproportionality indicators have been rounded to the nearest tenth.

At more than half of the 27 CASs, White children were under-represented among children admitted into care (15 of 27 or 55.6%). At one CAS (York Region CAS), White children were over-represented (3.7%), and at eight agencies, White children were relatively proportionally represented. Based on these 24 agencies, the proportion

of White children admitted into care was lower than their proportion in the child population (with a disproportionality indicator of 0.7). This under-representation is consistent with existing research.¹²⁴ At the other three CASs, data on White children was not collected or available.

For more information on the representation of White children admitted into care in different Ontario regions, see the interactive map at www.ohrc.on.ca.

6. Organization and community responses

6.1. Responses from children's aid societies to the OHRC's data request and inquiry results

Overall, children's aid societies' responses to our requests for data were very positive. Many said that they are concerned about the over-representation of Indigenous, Black and other racialized children in the child welfare system. Some had already begun to examine the issue, through data collection or other initiatives. Others told us they appreciated the opportunity to start the discussion about human rights-based data collection, and noted that this inquiry encouraged them to examine the strengths and weaknesses of their data collection methods and systems. Some said that they started to collect race-based data more consistently because we launched the inquiry, or were already working to make sure their data collection is consistent with other agencies.

Many CASs described their commitment to diversity, equity and anti-oppressive practice. Several described their equity plans or specialized programs and services they provide to help marginalized populations in their communities, such as dedicated teams to address the needs of Indigenous families. Some described projects specifically designed to address the disproportionality of Black and Indigenous children. Examining data is a key part of these processes. Some said that they have engaged in community partnerships, or shared their data with the Indigenous and racialized communities they serve to create dialogue and look for solutions.

¹²⁴ Chantal Lavergne et al, *supra* note 37; Vandna Sinha, Ashley Delaye & Brittany Orav-Lakaski, *supra* note 56.

During the inquiry, we continually heard feedback from CASs about our approach. We also shared agencies' quantitative results with them and invited them to comment. Some CASs said that the data supplied from 2012 to 2015 did not reflect the situation at the CAS currently, as data collection practices were much improved or their population demographics had dramatically changed. One CAS (Durham) provided a comprehensive response identifying many of its equity initiatives to support Black and Indigenous children and families. Some suggested that the data would provide far greater context if we could compare Indigenous and Black children in care to the children referred or investigated, instead of the child population in the CAS catchment area.

6.2. Responses from communities and organizations

We held a series of meetings to discuss the observations from the inquiry and obtain feedback. We invited the perspectives of people and groups representing Indigenous and Black communities who have been working on issues of racial disproportionality, child welfare and data collection. We also reached out to other relevant organizations, such as the Anti-Racism Directorate, the Ontario Association of Children's Aid Societies¹²⁵ and the Office of the Provincial Advocate for Children and Youth.

Indigenous organizational perspectives

Representatives from Indigenous organizations indicated that the findings provide numeric support to the experiences of the Indigenous peoples they serve. However, they said that Indigenous children are over-represented in care to a far greater extent than the findings suggest, specifically at Indigenous agencies, which were not included in our sample. We heard that data must be collected on children apprehended from reserves. Participants also said that the findings likely underestimate the number of Métis children admitted into care, as CAS workers frequently misidentify them as White or do not ask about Indigenous identity.

¹²⁵ The OHRC engaged with the OACAS repeatedly throughout the inquiry to clarify what data was needed and learn more about CASs' processes and government requirements. Also, based on written feedback from the OHRC, the OACAS revised their training curriculum for child welfare workers to include topics on the significance of the CHRT decision, collecting human rights-based data, anti-racism and reconciliation, anti-Black racism and the role of the OHRC. The OHRC has also helped the OACAS in its development of training by recording videos, including on the legal responsibility to provide child welfare services free from discrimination.

In addition, they emphasized that data collection should be mandatory at the agency and government level, but voluntary for Indigenous clients. Indigenous peoples may be reluctant to self-identify because of concerns about how, historically, Indigenous people's personal information has led to situations of egregious mistreatment, including placement of children in residential schools.

We also heard concerns that the data could be used to blame Indigenous families for any social problems they might experience. Participants also spoke of the urgent need to address broader social issues, such as the lack of safe and adequate housing, that contribute to the crisis of Indigenous children in care.

Given the high amount of missing/unknown data, participants questioned whether CASs and the courts are meeting their legal obligations to inform Indigenous communities about children who are apprehended. We heard that without this information identified at the beginning of the child welfare process, it will take longer for these children to be reunited with their communities.

Participants stressed that CASs need to be accountable to the Indigenous communities they serve. We heard that any next steps must empower Indigenous communities by making sure they play a central role in how child welfare data is collected, analyzed and reported.

Black community and organizational perspectives

Overall, participants were not surprised that we found racial disproportionalities for Black children at several CASs, but expected these to be much higher. Black community participants identified that the OHRC's observations, coupled with the many concerns arising from people in Black communities, should spur CASs to action. They said that CASs and government must take steps to root out and eliminate racial discrimination in the child welfare sector.

Other participants noted that more work needs to be done to look at the child welfare system as a whole, by examining service decisions made from the point Black families enter the system. We heard that CASs should look at other forms of data, such as complaints of racial discrimination and hiring data, to help build a complete picture of whether there are systemic discrimination issues at their agencies.

Participants also noted that CASs need support to:

- Fill gaps in their understanding of anti-racism – including anti-Black racism and anti-Indigenous racism
- Collect and analyze human-rights based data
- Improve their capacity to identify and address systemic racial discrimination.

7. Discussion

7.1. Data collection practices

Mainstream CASs' human rights-based (particularly race-based) data collection practices are widely inconsistent with each other and vary even within many individual agencies. Overall, race-based data collection processes and practices are a patchwork across the sector.

Approximately half of CASs had so much missing or unknown data that it seriously compromises their ability to do a proper analysis of racial disparity across their decision-making process (e.g. from referrals to decisions to investigate to placing children into care). CASs must be able to examine if there are racial disparities in their decision-making as a first step in understanding if these are due to systemic discrimination or other factors.

The work of the Motherisk Commission highlights the critical need for CASs to collect race-based data. This Commission was established to review child protection cases that may have been affected by flawed methods for testing a caregiver's hair for drug or alcohol use. It was mandated in part to engage with Indigenous and racialized communities. Although the Commission attempted to determine how many Black and other racialized families were affected, it could not because of a lack of race-based data.¹²⁶

These gaps in data collection also limit CASs' ability to:

- Fully understand who they are serving
- Proactively address human rights concerns
- Measure the progress of equity-based initiatives

¹²⁶ Motherisk Commission, *supra* note 40, at viii.

- Gain trust with communities and stakeholders who may be concerned about racial disparities and disproportionalities in child welfare
- Reduce their exposure to possible legal action and human rights complaints.

In addition to these observations, these inconsistencies in data collection raise questions about CASs' ability to meet their obligations under the *Child and Family Services Act (CFSA)*. Under the *CFSA*, CASs are obliged to recognize that, wherever possible, they must provide services in a way that respects cultural and religious differences.¹²⁷ The *CFSA* also states that services to Indigenous children and families should be provided in a way that recognizes their culture, heritage and traditions and the concept of the extended family.¹²⁸ It is difficult to see how CASs could adequately provide culturally-specific services and show that Indigenous and racialized children and youth are getting the services they are entitled to if they do not actively keep track of their clients' Indigenous identities or racial backgrounds.

There were notable exceptions to the OHRC's general observations. The agencies that produced the best human rights-based data (including race-based data) were better-resourced organizations in larger urban centres. Some of these used a deliberate equity-based approach that was grounded in trying to meet the needs of the marginalized clients and understand racial disproportionality.

It is also clear that many CASs have engaged in equity work, such as establishing equity plans, appointing specialized teams and working on committees to address disproportionality. Many also have unique programs and services in place to assist marginalized clients. However, this has not translated into race-based data collection being a consistent priority across the sector.

¹²⁷ *CFSA*, *supra* note 28, s 1(2)(4). Under the *CYFSA*, these provisions remain but additional obligations have been added so that children's services should be provided in a way that takes into account a child's or youth's race, ancestry, place of origin, colour, ethnic origin, and other *Code* grounds. *CYFSA*, *supra* note 28, s 1(2)(3)(iii).

¹²⁸ *CFSA*, *supra* note 28, s 1(2)(5). Under the *CYFSA*, *supra* note 28, s 1(2)(6), it states, "First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family."

The lack of explicit requirements from the government has contributed to the gaps in practices. There are several promising government initiatives underway to improve the consistency and quality of human rights-based data collected by child welfare agencies. Because these have not yet been fully implemented, it remains to be seen whether they will help organizations to properly assess racial disproportionalities and disparities and eliminate potential systemic discrimination.

7.2. Racial disproportionality in admissions into care

Despite its limitations, the data collected indicates disproportionately high incidences of Indigenous and Black children in admissions into care at many mainstream CASs.

Indigenous children

Indigenous children were over-represented in admissions into care at all but two CASs in our sample, with many CASs showing extreme levels of disproportionality. This over-representation existed at CASs across Ontario, regardless of the proportion of Indigenous children in the region's child population.

Even still, these figures likely underestimate admissions of Indigenous children into care. This may be due in part to the exclusion of Indigenous agencies from our sample. Across Ontario, the proportion of Indigenous children in foster care is seven-and-a-half times what one would expect based on their representation in the child population.¹²⁹ In 2013, approximately 13% of Indigenous children in Ontario were the subject of a child welfare investigation.¹³⁰ First Nations children make up a significantly large group in the child welfare system,¹³¹ which has been attributed in part to discriminatory underfunding of Indigenous CASs operating on reserve.¹³² Also, the high amount of missing/unknown race-based data at many agencies in our sample means that the numbers of Indigenous children admitted into care may be underestimated.

¹²⁹ Statistics Canada, 2016, *supra* note 8.

¹³⁰ Barbara Fallon et al, *supra* note 3.

¹³¹ Michael Wray & Vandna Sinha, *Foster Care Disparity for Aboriginal Children in 2011* (Montreal QC: Centre for Research on Child and Families, 2015) online: Canadian Child Welfare Research Portal cwrp.ca/publications/2997 (retrieved October 17, 2017).

¹³² Melisa Brittain & Cindy Blackstock, *supra* note 44.

Research suggests that there are likely multiple contributing factors to explain these findings, including deep levels of poverty and the effects of inter-generational trauma that bring Indigenous families into contact with child welfare. Worker and agency-level bias may be possible reasons and require further exploration. The long history and relationship of Indigenous peoples in Canada with the child welfare system overwhelmingly reflects experiences of racism and discrimination. These disproportionalities, coupled with the experiences and concerns of people in Indigenous communities, may indicate systemic discrimination at individual agencies.

The government and CASs also have important roles to play in reconciliation.¹³³ The TRC has recognized the United Nations *Declaration on the Rights of Indigenous Peoples* as the framework to address the long-term impacts of colonization on Indigenous peoples. To this end, the OHRC has made recommendations geared to government, CASs and the OACAS (see Section 8).

Black children

Black children were over-represented in admissions into care at approximately 30% of agencies in our sample, relative to their presence in the child population. These agencies were mostly based in urban areas and the Greater Toronto Area. Findings of over-representation are consistent with research from Canada and the U.S.¹³⁴

Studies have attributed Black children's disproportionate involvement in the child welfare system to several driving factors, including poverty and the risk factors associated with poverty.¹³⁵ The role of systemic discrimination within the child welfare system may be a factor and needs to be explored further. Over-reporting Black families to CAS and decisions to investigate appear to contribute to this over-representation.¹³⁶

¹³³ In 2017, the OACAS apologized for the harmful role child welfare has played in the past, and continues to play, in the lives of Ontario's Indigenous children, families and communities. See OACAS, *Child Welfare Apologizes to Indigenous Families and Communities* (2017) online: OACAS www.oacas.org/2017/10/child-welfare-apologizes-to-indigenous-families-and-communities/ (retrieved February 27, 2018).

¹³⁴ Bryn King et al, *supra* note 6; Catholic Children's Aid Society of Toronto, *supra* note 6; John Fluke et al, *supra* note 37.

¹³⁵ Elizabeth Bartholet et al, *supra* note 37; OACAS, *supra* note 14; John Fluke et al, *ibid.*

¹³⁶ John Fluke et al, *ibid.*

Given the findings and the serious concerns that continue to be raised by Black communities and advocates,¹³⁷ this inquiry should be a call to action for CASs to look seriously at anti-Black racism. Anti-Black racism is entrenched in society. Studies and consultations suggest it may exist within the culture of child welfare agencies in the form of negative stereotypes, different assessment thresholds, and differential treatment.¹³⁸

Conclusion

While the OHRC's inquiry focused on racial disproportionality as a potential indicator of systemic racial discrimination in the child welfare system, this represents only one part of the picture. The social and economic issues that contribute to the over-representation of Indigenous and Black children in child welfare – such as poverty, lack of adequate services and the effects of intergenerational trauma – are complex and multi-faceted. Many can be linked to historical and ongoing racial discrimination in society, and are broader than discrimination that may happen in CAS decision-making. The OHRC recognizes that these issues require a multi-pronged response from government, CASs and civil society. The ultimate goal is to create truly equitable outcomes for Indigenous and racialized children and families, so they can reach their full potential and fully take part in their communities and the life of the province.

This inquiry focused on identifying whether racial disproportionalities exist in admissions into care. The data presented here is not conclusive of discrimination. However, the OHRC's observations represent a starting point for CASs and the government to look critically at racial disparities in the sector, which could indicate

¹³⁷ OACAS, *supra* note 14; Ontario Human Rights Commission, *Under Suspicion*, *supra* note 14; Irwin Elman, "This is a Moment in Ontario's History that Feels Different" (February 17, 2017) *The Advocate's Blog* (blog), online: Office of the Provincial Advocate for Children and Youth provincialadvocate.on.ca/main/en/about/Blog.html (retrieved October 12, 2017); Sandro Contenta, Laurie Monsebraaten & Jim Rankin, *supra* note 68; Everton Gordon, "Toronto CAS Leads on Black Kids in Care: Editorial" *The Star* (26 August 2015), online: The Star www.thestar.com (retrieved October 20, 2017).

¹³⁸ Ontario Human Rights Commission, *Under Suspicion*, *supra* note 14; OACAS, *supra* note 14; Chantal Lavergne et al, *supra* note 37; Sheila Ards et al, *supra* note 89; Stephanie Rivaux et al, *supra* note 64; Detlaff et al, *supra* note 77; Kevin Gosine & Gordon Pon, *supra* note 86; Susan Chibnall et al, *supra* note 80; Nicholas E. Kahn & Mary Eschelbach Hansen, *supra* note 65.

racial inequality. The findings raise serious concerns for mainstream CASs about whether their structures, policies, processes, decision-making practices and organizational cultures may adversely affect Indigenous and Black families and potentially violate the *Code*.

Framework for response

Where notable racial disparities or disproportionalities exist in the quantitative data, organizations and institutions should:

- Acknowledge these disparities/disproportionalities and the potential impact they have on the trust and confidence of affected communities in the organization
- Acknowledge that while generally, quantitative data cannot on its own prove discrimination, these disparities/disproportionalities raise serious concerns that organizations should proactively and transparently investigate. This investigation should:
 - Canvass and reflect the perspectives and experiences of affected communities
 - Reflect existing relevant social science evidence
 - Attempt to isolate possible source(s) of the disparities/disproportionalities
 - Communicate the findings with affected communities to further understand their concerns
 - Set out next steps, with associated measures of success and monitoring
 - Report in a public and transparent way on the findings and next steps.

In the case of these inquiry findings, where a disproportionality indicator meets the threshold and shows an over-representation of Black or Indigenous children admitted into care, and/or a CAS has reason to believe that discriminatory barriers exist (e.g. complaints have been made or concerns have been raised in their particular communities), CASs should take action. Should a complaint be filed under the *Code*, if a CAS fails to act on data that shows a potential problem, it may prevent the organization from making a credible defence that it did not discriminate.

CASs should act by investigating whether discriminatory barriers exist, and by addressing them. Specific steps that correspond with the framework above are outlined in Section 8.

8. Recommendations and commitments

In the OHRC's report on racial profiling, *Under Suspicion*, we committed to developing specific policy guidance on child welfare to help individuals, community groups and organizations understand how racial profiling can be prevented and addressed.

Based on our findings, the OHRC makes the following recommendations:

Recommendations to the government of Ontario

1. The government of Ontario (government) should develop a provincial strategy to identify and address how families' social and economic conditions¹³⁹ are linked to racial disparities and disproportionality in the child welfare system. This strategy should contain measurable commitments to address these inequalities, including increasing the availability of funding, housing, services and supports to help families meet their needs and safely keep their children. The government should report on these commitments on an annual basis.
2. The government should commit to fully implementing the United Nations *Declaration on the Rights of Indigenous Peoples* and the Truth and Reconciliation Commission of Canada's Calls to Action.
3. The government should implement the Steering Committee recommendations as outlined in the Ontario Association of Children's Aid Societies' (OACAS) *One Vision One Voice* report.

¹³⁹ In our submission on Bill 89, the OHRC recommended that the government ensure that inadequate housing or poverty, as well as the mental health or other disability of a parent or guardian, not be presumptive or unfounded factors for finding a child's well-being is at risk. See OHRC, Bill 89 Submission, *supra* note 119 and OHRC, *Right At Home: Report on the consultation on human rights and rental housing in Ontario* (Toronto: Queen's Printer for Ontario, 2008) online: www.ohrc.on.ca/en/right-home-summary-report-consultation-human-rights-and-rental-housing-ontario at 67. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has raised concerns about women being forced to give up their children to foster care because of inadequate housing. UN Committee on Economic, Social and Cultural Rights: Concluding Observations, UNCESCR, 36th Sess, UN Doc E/C.12/CAN/CO/4; E/C.12/CAN/CO/5 (2006) online: www.refworld.org/docid/45377fa30.html (retrieved January 18, 2018) at 24.

4. The government should require by law that all CASs – both mainstream and Indigenous – collect human rights-based data, including race-based data, and poverty-related information.
5. The government should amend the *Human Rights Code* to add “social condition” as a protected ground of discrimination. In doing so, discrimination against people experiencing social and economic disadvantage would be prohibited in services, housing, employment and other areas.
6. The government should require that child welfare workers at all mainstream and Indigenous CASs be trained on how to collect human rights-based data. They should also require that child welfare workers be trained on anti-racism, including anti-Indigenous racism and anti-Black racism, and on providing culturally competent services to Indigenous, Black and other racialized families. Such training should incorporate the history and impacts of residential schools¹⁴⁰ and be done in partnership with people from affected communities.
7. The government should monitor and ensure CASs’ compliance with any legislation, regulations and policy directives pertaining to human rights-based data collection, with the aim of increasing the accuracy of the data collected and reducing the amount of missing or unknown data to zero.
8. The Ministry of Children and Youth Services (MCYS) should create a dedicated unit to advance equity for Indigenous, racialized and other *Human Rights Code*-identified groups in child welfare. Staff should have expertise in anti-racism, including anti-Indigenous and anti-Black racism. The unit would be responsible for building knowledge and resource capacity across CASs to collect and analyze data, identify potential sources of discrimination, develop training, and address systemic barriers and discrimination faced by Indigenous and racialized families and children. Liability for preventing and responding to discrimination would remain with individual CASs.

¹⁴⁰ Recommendation 1.iii. of the TRC’s Calls to Action. Truth and Reconciliation Commission of Canada, *supra* note 20.

9. Race-based data should be cross-tabulated with relevant provincial performance measures for the child welfare system.
10. The government should implement the Motherisk Commission report recommendations.

Recommendations to the Ontario Association of Children's Aid Societies (OACAS)

11. The OACAS should commit to fully implementing the relevant Truth and Reconciliation Commission of Canada (TRC)'s Calls to Action.
12. The OACAS should create a dedicated equity role to help CASs develop equity and knowledge capacity in conjunction with the Ministry of Children and Youth Services (MCYS) (see recommendation 8 in the section above).
13. The OACAS should implement the Steering Committee recommendations as outlined in the OACAS's *One Vision One Voice* report.

Recommendations to mainstream and Indigenous Children's Aid Societies (CASs)

14. CASs should commit to fully implementing the relevant Truth and Reconciliation Commission of Canada (TRC)'s Calls to Action.
15. CASs should comply with government requirements to collect, tabulate and report human rights-based data. In the absence of government requirements, CASs should voluntarily collect, tabulate and report such data.
16. CASs should reach out to and be guided by First Nations, Métis and Inuit communities on data collection standards, training, approaches, analysis and reporting that will respond to the specific context of Indigenous communities.
17. CASs should collect and tabulate human rights-based data, including race-based data, in a standardized way within and across agencies, across services decisions. This includes referrals, investigations, verifications of abuse allegations, referrals to ongoing services, admissions into care, apprehensions from First Nations reserves and Indigenous children off reserve, type of care,

days in care and referrals to drug and alcohol testing, *etc.* Data categories should be compatible with Statistics Canada categories and should be commonly defined.

18. In addition to any requirements to report data to the Ministry of Children and Youth Services (MCYS), all CASs should report publically on disaggregated human rights-based data and data on poverty, on an annual basis. CASs should engage with affected racialized and Indigenous groups in their communities, and the OACAS, to decide the most meaningful data and comparisons to report (*e.g.* Indigenous or racialized identity and sex, Indigenous or racialized identity and poverty, *etc.*). Any public reporting must adhere to legislated privacy requirements.
19. Race-based data should be cross-tabulated with relevant provincial performance measures for the child welfare system.
20. All data collected should be disaggregated to be unidentifiable and considered “open” data as per the Government of Ontario’s Open Data directive.¹⁴¹
21. New and incumbent child protection workers and managers should be required to undergo training on how to collect human rights-based data. Such training should be standardized across the province and should emphasize the importance of outcomes connected to data collection.
22. New and incumbent child protection workers and managers should be required to undergo training on anti-racism and providing culturally competent services to Indigenous, Black and other racialized families. Such training should be done in partnership with people from affected communities and incorporate a focus on:
 - a. Anti-Indigenous racism
 - b. Indigenous cultural competency training:
 - The history, impacts and intergenerational effects of the residential schools

¹⁴¹ Government of Ontario, *Ontario’s Open Data Directive* (2016) online: Government of Ontario www.ontario.ca/page/ontarios-open-data-directive#section-4 (retrieved October 17, 2017).

- The foundational differences between Indigenous and western world views regarding relationships between individuals, including children, and the community
 - Trauma-informed practices in an Indigenous context
 - The effects of ongoing colonialism
- c. Anti-Black racism
- d. The “child-welfare-to-prison pipeline.”
23. CASs should develop policies and procedures to guide staff on collecting human rights-based data, including race-based data. They should develop internal and external communications documents that outline why and how data collection should be done, and the benefits to clients and child welfare workers’ practice. These documents should be communicated to existing and new staff and all clients.
24. Where the OHRC’s data from CASs shows that Indigenous or Black children are over-represented among children admitted into care and this over-representation is noteworthy, CASs should take steps to further investigate whether the disproportionality is attributable to systemic racial discrimination or factors beyond the agency’s control. Even if an agency’s data does not show disproportionality, if a CAS has or ought to have reason to believe that discrimination or systemic barriers may exist, it should take steps to investigate further. These steps include one or more of:
- a. Further quantitative data analysis:
 - i. Conducting a disproportionality analysis using updated data, relying on 2016 Statistics Canada population data and controlling for sources of error (such as inconsistently named racial background categories)
 - ii. Using additional race-based data from other decision-making points (*e.g.* referrals, decisions to open investigations), to understand whether children are placed in care proportionally to the rate they are entering the agency’s services, and whether there are disproportionalities throughout the agency’s decision-making
 - iii. Comparing Indigenous and Black children to White children (a disparity analysis) to see if they are being treated similarly in the agency’s decisions once they have entered the system
 - iv. Examining trends over time, such as looking at whether the disproportionality indicator is consistent year after year. This

may be particularly helpful for agencies in regions with smaller proportions of Indigenous, Black and other racialized children in the population, and where there is a higher degree of variability in the disproportionality indicator

- v. Conducting further statistical analysis to isolate the impact of Indigenous identity/race after statistically controlling for other relevant factors or variables
 - vi. Conducting a data analysis on the Indigenous identity and race breakdown of staff at the agency
 - b. Further qualitative analysis:
 - i. Meeting with community organizations and groups to understand whether there is a perception of racial discrimination in the agency's services
 - ii. Conducting surveys to document the experiences and perceptions of service users and staff
 - iii. Conducting focus groups and/or qualitative interviews with racialized and Indigenous clients and staff to gather more detailed information on their experiences with the agency's services. People trained in cultural competency and trauma-informed approaches should conduct focus groups and/or interviews to ensure the safety of Indigenous and racialized clients and staff
 - iv. Examining any formal or informal human rights-related complaints that have been made against the agency
 - c. Conducting a review of the agency's rules, standards, formal and informal policies, procedures, decision-making practices and organizational culture to determine whether these have a discriminatory impact on specific racialized groups and Indigenous peoples.
25. Where an agency finds elements consistent with systemic racial discrimination, they must take steps to respond. These include:
- a. Demonstrating strong leadership that shows that racial discrimination will not be tolerated
 - b. Establishing stable and long-term resources within the agency dedicated to human rights and equity activity
 - c. Removing any bias or adverse impacts that exist in the agency's rules, standards, formal and informal policies, procedures, decision-making practices and organizational culture

- d. Investigating any alleged discriminatory conduct and taking corrective action where it is substantiated, up to and including dismissal
- e. Providing further anti-racism and cultural competency training to staff and management. See Recommendation 22
- f. Developing special programs to address the specific needs of Indigenous and/or racialized clients and increase hiring of Indigenous and racialized staff¹⁴²
- g. Creating anti-discrimination and harassment policies that explicitly define racial discrimination as a type of discrimination that is illegal and provide relevant examples
- h. Creating accountability mechanisms, such as complaints and disciplinary procedures
- i. Building dialogue and relationships with racialized and Indigenous groups in the community
- j. Undertaking comprehensive organizational development projects that incorporate the elements above
- k. Publically reporting on measures to address any issues identified.

¹⁴² For more information, see Ontario Human Rights Commission, *Your Guide to Special Programs and the Human Rights Code* (Toronto: Queen's Printer for Ontario, 2013) online: Ontario Human Rights Commission www.ohrc.on.ca/en/your-guide-special-programs-and-human-rights-code.

Appendix A: Detailed methodology

In 2016, the OHRC wrote to 47 CASs across the province to ask about the data collection practices they use to monitor Indigenous and racialized children, youth and their families' first contact with the system, how they progress through it, and transition out. We also requested quantitative and qualitative data on different points of service and decision-making, including first contact (referrals), admissions into care, types of placements and the supports and services they provide to children and families, broken down by various *Code* grounds, including race. We requested data collected from January 1, 2012 to December 31, 2015.

With this information, we conducted a review of CASs' human rights-based data collection practices, with an emphasis on whether they collect race-based data. This analysis is based on all mainstream CASs (n=38). We limited our analysis to mainstream CASs because we were most concerned about the potential for systemic racial discrimination at these agencies.

We also wanted to understand whether Indigenous and Black children and youth are over-represented in admissions to care, relative to their representation in the population. For this analysis, we needed two sets of data, broken down by racial category:¹⁴³ one on the numbers of children admitted into care at each agency, and one on the population of children in each agency's catchment area.

We asked for additional information from a subset of the initial 47 agencies (29 in total) to confirm the number of unique cases of children admitted into care between January 1, 2012 and December 31, 2015, broken down by racial category. We also asked them to confirm their geographic jurisdiction, including whether they served any First Nations reserves during this time period.

¹⁴³ To describe how we categorized children to do the quantitative analysis, we use the terms "racial category" and "racial group," which include Indigenous children. However, we recognize that Indigenous peoples understand themselves as peoples or nations, not as racial or ethnic groups. See section 1, "A word about terminology."

We requested customized data from Statistics Canada from the 2011 National Household Survey (NHS) to get population estimates for children aged 0-15¹⁴⁴ broken down by their reported identity: Aboriginal, Black and White. Data from the NHS 2011 was the population data that was available when we conducted the inquiry and was most comparable to the data received from the CASs. We also requested information on religion and no religious affiliations, so we could get the correct benchmark data for the two Catholic CASs (Catholic CAS of Hamilton and Catholic CAS of Toronto) and their non-Catholic counterparts (CAS of Hamilton and CAS of Toronto).

From the original 47 CASs, we removed 20 agencies from the admissions analysis for these reasons:

- Nine of the CASs have a mandate to specifically serve Indigenous children, which meant we could not do the disproportionality analysis¹⁴⁵
- Three CASs were removed because they do not collect race-based data or other *Code* information on their services or do not collect consistent race-based data when children are admitted into care (Jewish Family & Child, Kenora-Rainy River Districts Child & Family Services, Family and Children's Services of Frontenac, Lennox and Addington)
- Two were removed because the amount of missing/unknown race-based data was over 50% (Family & Children's Services of Renfrew County, Simcoe Muskoka Family Connexions)
- One was removed because, due to limitations of its database, it supplied data collected at one point in time instead of the time frame requested (The Children's Aid Society of the District of Thunder Bay)
- Four CASs were eliminated because the proportions and numbers of Indigenous and Black children admitted into care were very small (11 and under). This meant that the data either had to be suppressed, or any change would have made a substantial difference in the disproportionality indicator (Huron-Perth Children's Aid Society, Valoris for Children and Adults of

¹⁴⁴ Under the *CFSA*, CASs provide child protective services to youth aged 0-15. After age 15, a youth who has been previously involved with the system may be admitted into care based on a court order. In some situations, youth aged 18 and older may also voluntarily return to care to receive ongoing services. Under the *CYFSA*, as of January 1, 2018, CASs must provide child protection to 16- and 17-year-olds.

¹⁴⁵ After we began our inquiry, an additional Indigenous CAS, Nogdawindamin Family and Community Services, was designated as a child welfare authority.

Prescott-Russell, The Children's Aid Society of Oxford County, Family & Children's Services of St. Thomas and Elgin). Two of these also had high amounts of missing/unknown race data in admissions (38%)

- One CAS was removed because the number of Black children admitted into care was so small it had to be suppressed, and the vast majority of Indigenous children admitted were from other regions and fell under other CASs' jurisdictions (Family & Children's Services of Lanark, Leeds & Grenville).

In addition to the methods described above, we examined research from Canada and the U.S. on racial disproportionality and disparity, looked at many of the policies and procedures given to us by CASs, and spoke to organizations and individuals who have been working on these issues to understand the key concerns.

Quantitative analysis

We analyzed the admissions data in two ways to assess whether there was over-representation. First, we calculated disproportionality by dividing the proportion of children of each racial group (for example, Black children) admitted into care at an agency by the proportion of children of that group in the population. The resulting value is called a "disproportionality indicator":

$$\text{Disproportionality (racial group1)} = \frac{\text{racial group1 admitted into care} \div \text{total admitted into care}}{\text{racial group1 in the population (age 0 – 15)} \div \text{total population (age 0 – 15)}}$$

A disproportionality indicator greater than 1.0 represents over-representation of that racial group among children admitted to care, relative to their proportion in the population. A value less than 1.0 means that children of that racial group were under-represented among children admitted to care, relative to their proportion in the population. A value equal to 1.0 indicates proportionality.

How much attention one should pay to the data is shown by using a second measure that calculates the proportionality of incidence of admissions into care as a difference in proportions:¹⁴⁶

$$\left(\frac{\text{Proportionality of incidences of admissions into care(racial group1) = \text{proportion of racial group1 admitted into care} - \text{proportion of racial group1 in population (age 0 - 15)}}{\text{proportion of racial group1 in population (age 0 - 15)}} \right) \times 100$$

Values are expressed as percentages. A positive percentage means that children of the racial group were over-represented among children admitted into care, and a negative percentage means that children of the racial group were under-represented among children admitted into care.

A 20% threshold is applied to establish which data should be considered noteworthy. Although this measure does not indicate whether the data is statistically significant, the threshold is a simple measure that is used to indicate the likelihood of variance, and increases the confidence level in how the data is interpreted. The 20% threshold factors in the impact of unexplained variables by creating a buffer zone.

Percentages equal or higher than +20% or equal or lower than -20% indicate data that is of sufficient concern to note and act on.¹⁴⁷ Any disproportionality indicator greater than 1.0 that meets the 20% threshold is noteworthy. These figures have been highlighted in the data table that accompanies this report.

¹⁴⁶ This is an approach the federal government has used when examining equity in employment. This analysis was used by researchers at York University, to examine whether certain racial groups were proportionately over-represented in traffic stops made by the Ottawa Police Service. Lorne Foster, Les Jacobs & Bobby Siu, *Race Data and Traffic Stops in Ottawa, 2013-2015: A Report on Ottawa and the Police Districts* (2016) online: Ottawa Police Service www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDCP.asp (retrieved November 7, 2016) at 48-49.

¹⁴⁷ *Ibid.*

Limitations of the quantitative data

There were several limitations to the data, due in part to the nature of the data collected by CASs:

- CASs often used different names for racial background or Indigenous categories (e.g. “First Nations,” “Native non-status”, etc.). There were also inconsistencies in how children’s racial backgrounds and Indigenous identities were determined (e.g. worker identified versus self-reported), and/or inputted into CASs’ data management systems.
- Because of inconsistencies in the types of race-based data collected, we were unable to analyze data on children of backgrounds other than White, Indigenous and Black.
- Several CASs had a high amount of missing/unknown data (20% or over). Missing/unknown data may lead to underestimates of Black, White or Indigenous children admitted into care.
- Due to high amounts of missing and unknown race-based data, we could not examine admissions into care in context with other service decisions and agency processes (e.g. referrals, decisions to open investigations) and make comparisons. In particular, we could not examine whether children of different groups are admitted into care proportionately or disproportionately to the rate they are referred or investigated.
- The data provides an incomplete picture of Indigenous children in care in Ontario because the disproportionality analysis is limited to mainstream CASs.
- Across the sample, there may be a small amount of double-counting, as some CASs provided data that included children who were under the jurisdiction of another CAS (Other Society Wards).
- Some children admitted into care (typically fewer than 5% for each CAS) were outside the benchmark ages of 0-15.
- For CASs in regions with smaller proportions of Indigenous and Black people, the disproportionality indicator may vary moderately or considerably if one child is added or taken away from the count of Indigenous or Black children admitted into care. This may decrease the reliability of the data.

- The voluntary nature of the NHS 2011 survey and the way the survey was administered may have led to lower response rates from people with lower incomes, new immigrants and Indigenous peoples.¹⁴⁸ This may lead to underestimating population figures for these groups, including First Nations peoples who live on reserve. One measure of data quality of the NHS is the global non-response rate (GNR). For some geographic regions requested, the GNR was above 30%, which is higher than the provincial average of 27.1% and may represent a higher risk of inaccuracy. Statistics Canada suppresses data where the GNR is 50% or higher because of poor data quality.¹⁴⁹
- There are many ways to interpret and explain the findings. Without additional information, we cannot conclude that the reason behind any disproportionality is discrimination or systemic racism. However, the results do point to important areas that should be examined further.

¹⁴⁸ Vandna Sinha, Ashleigh Delaye & Brittany Orav-Lakaski, *supra* note 56. For example, in its report on the health of urban Indigenous people in Toronto, the authors note that "...the majority of Indigenous People living in Toronto did not participate in the 2011 NHS and those who did participate had higher incomes. This participation bias is created because the main NHS recruitment method is to send mail to fixed addresses using the voting registrar. People with low incomes are more likely to move frequently or be homeless, and therefore may not receive this mail." Toronto Indigenous Health Advisory Circle, *A Reclamation of Well Being: Visioning a Thriving and Healthy Urban Indigenous Community: Toronto's First Indigenous health strategy 2016-2021* (Toronto: Toronto Indigenous Health Advisory Circle, 2016) online: www.toronto.ca/legdocs/mmis/2016/hl/bgrd/backgroundfile-93077.pdf at 6.

¹⁴⁹ Statistics Canada states, "For the 2011 National Household Survey (NHS) estimates, the global non-response rate (GNR) is used as an indicator of data quality... A smaller GNR indicates a lower risk of non-response bias and as a result, lower risk of inaccuracy. The threshold used for estimates' suppression is a GNR of 50% or more. For more information, please refer to the *National Household Survey User Guide, 2011*." See Statistics Canada, *NHS Profile, 2011 – About the data* (Last modified 2016-01-05) online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/dp-pd/prof/help-aide/aboutdata-aproposdonnees.cfm?Lang=E (retrieved October 17, 2017).

Appendix B: Glossary

Black: Refers to people who are African descended (for example, African-Canadian, African-Caribbean, continental African, *etc.*). It conforms to the Statistics Canada category of “Black.” For the quantitative analysis, children who are biracial with one identity identified as Black were categorized as “Black.” Children who are Black and Indigenous were categorized as “Indigenous.”

Disparity: Differences between racial groups at decision-making points in a service or program. Groups are compared to each other to determine whether outcomes at important decision-making points are different.

Disproportionality: The state of being “out of proportion.” In child welfare, it is usually used to refer to the under- or over-representation of certain groups relative to their proportion in the general population.¹⁵⁰

Indigenous: This term is based on the Statistics Canada term “Aboriginal Identity.” “Aboriginal identity” refers to whether the person reported being an Aboriginal person, that is, First Nations (North American Indian¹⁵¹), Métis or Inuk (Inuit) and/or is a Registered or Treaty Indian and/or a member of a First Nation or Indian Band.¹⁵² For the quantitative analysis, children who are biracial with one identity identified as Indigenous were categorized as “Indigenous.”

Missing data: The child’s racial background or Indigenous identity is not known because the data has not been recorded.

Race: A ground that is protected from discrimination in the *Code*. Rather than being a biological reality, “race” is socially constructed to create differences among groups with the effect of marginalizing some people in society. In addition to race, the *Code* prohibits discrimination on several related grounds: colour, ethnic origin, ancestry, place of origin, citizenship and creed (religion).

¹⁵⁰ Catholic Children’s Aid Society of Toronto, *supra* note 6 at 5.

¹⁵¹ The term “Indian” refers to a person registered or eligible to be registered as an “Indian” under the *Indian Act*. The OHRC acknowledges that many Indigenous persons find the term “Indian” offensive. It is used here only because it is the term used in the applicable legislation.

¹⁵² Statistics Canada, no date. *Aboriginal Peoples Reference Guide*, National Household Survey, 2011, Statistics Canada Catalogue no. 99-011-XWE2011006. Last updated May 28, 2014. Online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-011-x/99-011-x2011006-eng.cfm (retrieved April 22, 2015).

Racialized people: Racialization is the “process by which societies construct races as real, different and unequal in ways that matter to economic, social and political life.”¹⁵³ In this report we use the term “racialized people” to refer to people who are not Indigenous or White. This term expresses race as a social construct.

Service decisions: Decisions made throughout the child welfare process that represent different interventions. In child welfare research, data is collected on decisions to open cases for investigation, transfer families to ongoing supports and services, place children into care, place children into a type of care (foster care, institutional care), among other decisions. In this report, referrals to the CAS are also considered “service decisions,” even though these decisions are not made by the CAS.

Systemic racial discrimination: Results from patterns of behavior, policies or practices that are part of the social or administrative structures of an organization, and which perpetuate a position of relative disadvantage for Indigenous and racialized people. These policies or the behavior may appear neutral, but nevertheless have an exclusionary or adverse impact on Indigenous or racialized people. Policies or procedures may themselves be based on unconscious racial stereotypes.

Systemic racial discrimination can overlap with and be in part reproduced through acts of racial discrimination by individuals. However, the focus of the analysis is on the outcome and effects of institutional policies, practices and procedures.

Unknown data: The CAS has marked the Indigenous or racial background as “Unknown.” This includes when the child is assessed and their identity is marked as “unknown,” child/family refused to identify, biracial or mixed-race children where identities were not specified and children marked “other” with no other identity specified.

¹⁵³ Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 23 at 40-41.

White: Conforms to the Statistics Canada category of “White.” It refers to people who are Caucasian in race or white in colour.¹⁵⁴ The individual does not identify as Indigenous or as a racialized person or “visible minority.” For the quantitative analysis, children who are biracial with one identity identified as White were categorized as either “Black,” “Indigenous” or removed from the analysis.

¹⁵⁴ Adapted from the Statistics Canada definition of “visible minority.” The federal *Employment Equity Act* defines “visible minorities” as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.” Statistics Canada, *Visible Minority and Population Group Reference Guide: National Household Survey, 2011* (2013) Statistics Canada Catalogue no. 99-010-X2011009. Online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.pdf (retrieved April 22, 2015) at 4.

Appendix C: Acknowledgements

We would like to thank the many people and organizations that contributed to this inquiry.

African Canadian Legal Clinic
Anti-Racism Directorate
Association of Iroquois and Allied Indians
Association of Native Child and Family Services Agencies of Ontario
Kate Schumaker and Tanya Morton, Catholic Children's Aid Society of Toronto
Chiefs of Ontario
Nicole Bonnie, Children's Aid Society of Toronto
Cindy Blackstock, First Nations Child and Family Caring Society of Canada, McGill University – School of Social Work
Bobby Siu, Infoworth Consulting Inc.
Vandna Sinha, McGill University - School of Social Work
Métis Nation of Ontario
Ministry of Children and Youth Services – Child Welfare Secretariat
Ministry of Children and Youth Services
Office of the Provincial Advocate for Children and Youth
Ontario Association of Children's Aid Societies
Ontario Federation of Indigenous Friendship Centres
Janet Mosher, Osgoode Hall Law School
Justice Donald McLeod, Ontario Court of Justice
Justice Stanley Sherr, Ontario Court of Justice
David Rothwell, Oregon State University
Mohamed Malik, Peel Children's Aid Society
Statistics Canada
Union of Ontario Indians
Bryn King and Barbara Fallon, University of Toronto – Factor-Inwentash Faculty of Social Work

Appendix D: Letter to Minister Philpott

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January 12, 2018

The Honourable Jane Philpott, P.C., M.P.
Minister of Indigenous Services
House of Commons
Ottawa, Ontario
K1A 0A6
jane.philpott@canada.ca

Dear Minister Philpott:

Re: Indigenous child welfare crisis

I hope this letter finds you well. I commend you for identifying the Indigenous child welfare emergency as a “humanitarian crisis” and reaching out to the provinces, territories, First Nations, Métis and Inuit leaders, and child welfare experts to discuss solutions. In advance of this meeting, I am writing to update you on the Ontario Human Rights Commission’s (OHRC) recent inquiry into the Ontario child welfare system. Based on the findings of the Inquiry, we suggest the federal government take specific steps to help address the staggering proportions of First Nations, Métis and Inuit children in the child welfare system.

The OHRC’s child welfare inquiry

The OHRC is greatly concerned about inequities facing Indigenous children and families in child welfare and other areas and has made reconciliation a key strategic focus. In response to the Truth and Reconciliation Commission of Canada’s (TRC) “Calls to Action”, and to similar calls from people in Black communities, the OHRC

committed to the goal of preventing and reducing the over-representation of Indigenous and racialized children and youth in the child welfare system. We used our inquiry powers under the Ontario *Human Rights Code* (*Code*) to collect race-based data from children's aid societies (CASs) across the province to determine whether Indigenous and Black children are over-represented among children admitted into care.

We undertook this inquiry because we are concerned that systemic racial discrimination in the child welfare system may play a role in racial disproportionality. In our 2016 consultation on racial profiling, we heard from many Indigenous and Black participants about troubling experiences and perceptions of systemic racial discrimination in the child welfare system. These are documented in our report, *Under Suspicion*.

Consistent with other research, our inquiry found that Indigenous children are over-represented at the majority of mainstream CASs in Ontario that collect race-based data. In addition, we found that race-based data collection is a patchwork across the child welfare system. Many CASs do not know or are missing data on the racial backgrounds of relatively large numbers of children across service decisions, such as the decision to investigate a case, or place a child into care. Further details about these and other inquiry results will be in our upcoming report, which we intend to release in the spring.

Recent amendments to Ontario's *Child, Youth and Family Services Act* (*CYFSA*) may help to address some of these issues. It permits the Minister to require CASs to collect race-based data and other kinds of personal information. The government is currently developing a policy directive to this effect.

Without adequate race-based data, it is extremely difficult for CASs to begin to examine whether racial disparities exist in their services. Without sufficient data, they cannot understand whether any racial disparities are due to systemic discrimination and/or other societal factors such as those linked to poverty, poor housing, or other family needs. Additionally, where child welfare legislation obliges CASs to provide services that recognize cultural differences, as they do in Ontario, CASs cannot show they are meeting these obligations without collecting race-based data.

Given that our Inquiry has identified these issues as a concern, we suggest that you discuss with your provincial and territorial counterparts the necessity of requiring that CASs (both mainstream and Indigenous) collect race-based and other human rights-based data for children and families in the child welfare system. Such data collection could measure any disparities across important service points, such as referrals, as well as decisions to investigate, transfer cases to ongoing services, refer caregivers to drug and alcohol testing, apprehend children from reserves, and place children into care. Race-based data collection could also be implemented to properly evaluate the effect of any system-wide changes that will be put in place to support the safe unification of Indigenous families.

Thank you for considering this matter. If you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Renu Mandhane".

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner
Ontario Human Rights Commission

cc: Hon. Yasir Naqvi, Attorney General
Hon. Michael Coteau, Minister Responsible for Anti-Racism
OHRC Commissioners

