MISINFORMED:

How the Ministry of Children and Family Development failed in its permanency planning obligations to a youth in care

OMBUDSPERSON
BRITISH COLUMBIA

Public Report No. 54
September 2023

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Our office is located on the unceded traditional lands of the Lək̓ʷəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the Indigenous Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.

OMBUDSPERSON
BRITISH COLUMBIA

September 2023

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Public Report No. 54, *Misinformed: How the Ministry of Children and Family Development failed in its permanency planning obligations to a youth in care.*

The report is presented pursuant to section 25(1) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

Mailing address: PO Box 9039 Stn Prov Govt • Victoria BC V8W 9A5
Phone in Victoria: 250-387-5855 • Toll-Free: 1-800-567-3247 • Fax: 250-387-0198 • bcombudsperson.ca

CONTENTS

Contributors

Laurel Cannon

Emma Cobby

Zoë Jackson

Nathan Paul

MESSAGE FROM THE OMBUDSPERSON

Alexandra came to our office with a simple and strong message – she wanted to be heard.

It is unfortunate that Alexandra's experience is one that is shared by too many young people in this province. She is a youth who, unable to return to her family home because it was not safe, was placed in the care of the Ministry of Children and Family Development. However, once in the temporary custody of the ministry, mistakes were made by the ministry that left her unable to access the educational and health supports she had been led to believe she was entitled to receive.

Before coming to our office, Alexandra raised her concerns at the highest levels by writing directly to the Minister of Children and Family Development. She told the minister about the 16 years she had spent in and out of the system of ministry care. Alexandra told the minister about her dream of getting a post-secondary education so she could help others. She also shared her feelings of devastation when she found out that she would not be eligible for most ministry-funded post-secondary educational supports, even though she had been led to believe by the ministry that she should be. Alexandra explained that she had been transferred from the temporary care of the ministry to the permanent custody of her aunt through a ministry process she was not properly informed about and did not understand.

Alexandra came to us because she was frustrated and equally determined to hold the ministry accountable for not doing more to help her understand the ramifications of consenting to permanent custody with her aunt – a decision that, as we found in our investigation, was marked by the ministry's failure to provide her with adequate information and to follow its own policies and legal requirements.

The ministry's permanency decisions have impacts for the rest of a youth's life. When engaged in permanency planning, the ministry must take various factors into account to determine what is in the best interests of that youth. At the same time, the ministry is obligated to ensure young people, like Alexandra, have all the information and legal advice necessary to fully understand the impact of the decisions that can change the trajectory of their lives forever.

Our investigation found that the ministry mistakenly provided Alexandra with an incorrect understanding of what the permanent transfer of custody would mean for her. Further, the ministry did not offer Alexandra the independent legal advice required by law. When the ministry prepared the court forms in support of the application, it left blank the section indicating Alexandra understood the ramifications of the order. Ministry staff failed to confirm that both Alexandra and her aunt understood the nature and consequences of their consent and that their consent to the order was voluntary, as is required by the *Provincial Court (Child, Family and Community Service Act*) *Rules*. In my view, these failures made the permanency planning process that the ministry undertook in Alexandra's case unfair.

In this report, I make five recommendations.

Because of the unfairness I found in Alexandra's case, I have recommended that the ministry pay an amount to Alexandra that is equivalent to the financial supports the ministry led her to believe she would be eligible for.

It is also likely that there are other youth in Alexandra's situation who may similarly not have fully understood the ramifications of permanency plans made by the ministry. Because these kinds of orders are often used as a means of preserving kinship ties for Indigenous youth, it is possible that Indigenous youth are disproportionately affected by any ministry failures to follow the legal requirements in respect of permanency planning. I am calling on the ministry to perform an audit to identify how often children and youth have been informed of their right to receive independent legal advice when the ministry is applying for an order to transfer custody of a child or youth to a relative.

I am extemely disappointed that the ministry has not accepted my recommendation to financially address the unfairness for Alexandra, and has also refused to implement my recommendation of conducting an audit to see how many other young people might also be impacted. It is particularly concerning that the ministry has explained its refusal on the basis that it does not have enough confidence in its own record-keeping to conduct a meaningful audit. For a ministry with such important responsibilities to safeguard the best interests of vulnerable children and youth, this is a troubling admission.

But more fundamentally, the ministry's refusal to identify others similarly affected indicates a lack of commitment to learning from mistakes, to be curious about its own operations and ultimately, to act in the best interests of every one of the children in its care.

I am also calling on government to strengthen oversight of the permanency planning process when children and youth are moving from government's temporary care to the permanent care of a relative. The Public Guardian and Trustee is well positioned to review and provide advice to the court on the financial implications of these kinds of permanency orders, thereby assisting the court to ensure that the proposed permanency plan is in a youth's best interests. BC law gives the PGT this role in many other circumstances but the ministry has not accepted this recommendation.

The ministry has accepted only two of the recommendations I have made. It has agreed to develop and implement a strategy to ensure that staff are aware of, and can effectively communicate to children, youth, and caregivers the benefits and limitations of various permanency options. Similarly, it has agreed to develop and implement a strategy to ensure that staff are aware of their responsibility to provide a referral for independent legal advice. I will be monitoring and reporting publicly on the implementation of these recommendations.

My goal in releasing this report publicly is to highlight the critical importance of the three outstanding recommendations government has so far not accepted.

I applaud Alexandra for her courage to take steps to seek resolution and justice in her own case. Her strength and tenacity are reflected in this report. We have heard her, and I am hopeful that the ministry will hear her voice as well, to ensure she and other youth in her position are treated fairly and equitably.

Sincerely,

Jay Chalke
Ombudsperson,
Province of British Columbia

BACKGROUND

Alexandra's experience

Alexandra is a former youth in care, and on June 18, 2021, she wrote to the Minister of Children and Family Development. A few days before she wrote to the minister, the Ministry of Children and Family Development had denied Alexandra's applications to the Agreement with Young Adults Program (AYA) and the Youth Educational Assistance Fund (YEAF), which help former youth in care like her pay for post-secondary education. Alexandra had thought she was entitled to support from these programs because she believed the ministry had made promises to provide financial support for her education.

Frustrated and upset that the ministry had denied her application, Alexandra decided to write to Minister Dean to tell her directly why she felt the ministry's decision had been unfair. At the same time, she wanted to make sure that the minister understood who she was, why she felt her application should have been approved and, how her many years both in foster care and receiving services from the ministry had impacted her life and her plans for the future. Alexandra believed that once the minister heard her experience directly, and in her own words, she would see why Alexandra was entitled to post-majority educational supports and agree that she had been unfairly treated when ministry staff denied her application.

Agreements with Young Adults

The Ministry of Children and Family Development currently provides financial support, through the Agreements with Young Adults (AYA) program, for former youth in care (continuing custody order or youth agreement) under age 27 to finish high school, go to college or university, or take a rehabilitation or life-skills program. While former youth in care must meet several eligibility requirements to receive approval for this program, recipients can receive funds to cover the costs of living expenses, child care, tuition fees and health care while they are participating in an approved program.

Youth Educational Assistance Fund

Delivered jointly by the Ministry of Post-Secondary Education and Future Skills and the Ministry of Children and Family Development, and administered by StudentAid BC, the Youth Educational Assistance Fund (YEAF) is a B.C. grant for former youth in care (continuing custody order) ages 19–24 that can cover expenses related to post-secondary expenses up to $5,500 per program year for four years.

In her letter to the minister, Alexandra wrote that she was born in the late 1990s in a small town in British Columbia, and from the time of her birth, her mother had struggled with severe alcohol misuse and was a victim of repeated violent physical assaults. Alexandra shared with the minister that she came into foster care for the first time at three months of age, and remained in care for seven months, returning home for just one month before being removed by social workers again in response to the same, repeating, pattern of alcohol use and violence in the family home. Alexandra told Minister Dean that she was returned to her family home and then removed three more times – five times in total – in response to similar child protection concerns over the course of her childhood and youth.

Reflecting on these experiences in her letter to the minister as a young adult, Alexandra described still having vivid memories of feeling shuffled from place to place, between a variety of ministry foster caregivers, with no clear sense of safety or predictability. She said that she always felt insecure about where she would grow up or who would, or could, keep her safe. Alexandra told Minister Dean that she felt she had no say with respect to her own life, and that after a while it seemed as though the ministry had forgotten about her, even though nothing had changed in her family home.

Alexandra recounted that as she entered her teen years, a family member began to use physical violence against her as well, on occasion causing significant physical injuries. Alexandra wrote that these episodes escalated within her home, to the point that she was being beaten almost every day and yet also needed to take on the additional responsibilities of caring for her mother and younger siblings – who also witnessed the abuse that Alexandra and her mother repeatedly suffered. Alexandra said there were times when she was not allowed to attend school, but because getting an education was important to her, she resorted to sneaking out of the house before others awoke to go to school, frequently without having breakfast or taking food for lunch, because of her fear of angering her abuser and experiencing more assaults.

Alexandra told Minister Dean that the ministry removed her from her home a final time in 2014, when she was 16 years old, after she had been violently assaulted in the home and left with a broken nose. The morning after this assault, Alexandra had managed to attend school and tell a counsellor about what had been happening to her. The ministry finally responded to the abuse that Alexandra had been subjected to by removing her from her family home in April 2014, and placing her in the ministry's care under an interim temporary custody order. However, the problems that prompted Alexandra to write this letter to the minister were about to begin.

Alexandra told Minister Dean that ministry staff quickly engaged her in its plans and presented her with three options. Alexandra wrote that she remembers feeling scared and unable to fully understand what these options meant for her and her future. All she knew was that she could not return home. She wrote:

In terms of my placement, I was not made aware of the long-term effects my choice would have. I didn't even really understand that it was completely up to me, I was given the option to "go with family who is willing to take you" or "go back into the system." I was also told that because I was sixteen I could also "just go on my own." I was scared and had no idea what that meant.

Alexandra recounted that she was placed in the temporary kinship care of her maternal aunt. As she told the minister, "I didn't think I had a choice." Alexandra's placement with her aunt was a prelude to the ministry's decision to initiate legal permanency planning later in 2014. This process culminated with the ministry obtaining a court order under section 54.01 of the *Child, Family and Community Service Act* (CFCSA)[1] to permanently transfer custody of Alexandra to her aunt in 2015, when Alexandra was 17 years old.

Alexandra told Minister Dean that when the ministry presented the option of a section 54.01 order, both she and her aunt understood, through their discussions with Alexandra's social worker, that she would maintain her eligibility as a former youth in care for post-majority educational supports from the ministry if she agreed to this plan. Alexandra was clear in her letter to the minister that despite the many barriers that had existed in her life, getting an education was important to her. The ministry was aware that pursuing post-secondary education was Alexandra's goal and, as such, it was a central focus of the discussions between Alexandra, her aunt and the ministry about legal permanency.

Section 54.01 Orders

In circumstances where remaining with, or returning to, a parent following a period of temporary alternative care would not be in the child's "best interests," a court can issue an order under section 54.01 of the *Child, Family and Community Service Ac*t (CFCSA) to permanently transfer custody of the child to an extended family member or other person with an existing relationship with the child.

When an order under section 54.01 is being considered, the ministry participates in the screening and assessment process to ensure that the proposed guardians will be able to provide for the safety and well-being of the child and understand that, in consenting to the plan for a permanent transfer, they will be assuming the roles and responsibilities of a legal guardian. Transferring custody through an order under section 54.01 is a means of preserving family connection and achieving permanency and offers an alternative to keeping children in ministry care.

Alexandra told Minister Dean that after her high school graduation she was not yet ready to pursue post-secondary studies. Alexandra said that she felt this way, in large part, because of the many traumatic experiences she had experienced during her life, and that she needed to heal both physically and emotionally. In the end, Alexandra applied for post-secondary education at age 23, and she told Minister Dean that she finally felt ready to pursue her studies after years of struggling to come to grips with the trauma she had experienced while in the ministry's care. As she told Minister Dean:

[1] *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46.

> *Only this year, I have felt ready to continue my education. I didn't expect to even graduate high school, but after years of trauma therapy (which I sought out on my own) and living on my own, I am now ready to take the next step towards bettering my life. I want the complete opposite of what my parents have shown me.*
>
> *…*
>
> *Growing up in the chaotic, unpredictable and extremely abusive environment that was my childhood, graduating high school was never on my radar as a possibility for me, let alone being accepted into and attending a post-secondary institution.*

Instead of receiving the support that she believed she had been promised by her ministry social worker, Alexandra received formal letters from the ministry denying her eligibility for both the AYA program and the YEAF program. Alexandra felt these decisions were inconsistent with what that she had been led to believe by the ministry when she was a teen. Alexandra outlined that she had recently learned that she might be eligible for some funding through the Provincial Tuition Waiver Program. However, Alexandra wrote in her letter that the ministry had determined that the post-secondary program she was accepted into was not at one of the eligible institutions, and as such she would not receive any sort of financial assistance from the ministry, despite the years that she had spent in care, the assurances she believed she had received from the ministry, and the ongoing legacy of childhood trauma that she was still living with. Additionally, Alexandra noted that she had been unable to count on receiving any financial support from her aunt to pursue post-secondary studies.

Provincial Tuition Waiver Program

Funded by the Ministry of Post-Secondary Education and Future Skills, the Provincial Tuition Waiver Program (PTWP) is a program for former B.C. youth in care, ages 19–26 (as of August 1, 2023, the program became available to former youth in care of any age), who are planning to attend or are currently attending either full-time or part-time studies at one of 25 approved institutions or programs in B.C.

This program provides financial support for tuition fees. It is available to individuals who were formerly in any form of care through the Ministry of Children and Family Development or Indigenous Child and Family Service Agencies, or who were supported through the Ministry of Social Development and Poverty Reduction Child in Home of Relative program, for at least 24 months or 730 days (consecutive or accumulated in any combination).

In response to these unmet promises, Alexandra stated the following in her letter to the minister:

> *Most former youth in care, like me, are not only leaving home with some degree of trauma, but also no money to their name. The system is failing youth in care when placing them back with their families, and is abusing their power when they deny them the help that they are promised at such young ages. I have been told over and over again that I will be able to get assistance when I want to go to school, and if I had known at sixteen that I would not get financial help if I chose to live with family as opposed to a foster family, I would have chosen differently.*

Further, she wrote:

> *I truly feel like I am more than deserving of financial aid, and being denied because I wasn't under a specific agreement at the age of 19 is extremely insulting and discouraging. And again, it doesn't make sense. I feel like I am being disregarded by the ministry all over again.*

Alexandra ended her letter with a personal appeal, while remaining hopeful that the ministry would understand her experience and hear her voice:

> *Not only am I a former youth in care, but I am also a victim of abuse, without parents or family to support me and years of trauma that I have had to work through as a result of what the ministry decided back in 2001. I would have given anything to have been adopted back in 1999, but I was a baby and I had no say. That being said, I am now just trying to make the most of my future, and I do not think it is fair to ask me to change my choice of program or my career goals when I have already had to sacrifice so much.*
>
> *I hope this letter reaches you, I hope my voice is heard, and I hope my situation is acknowledged. I can only imagine how many other youth might be in situations similar to mine, and have no clue who to go to or how to even ask for help.*

Despite her direct pleas to Minister Dean, the ministry remained unwilling to provide Alexandra with the financial supports that she needed and, in her view, was owed, both because of the promises that the Alexandra remembers the ministry making to her when she was a teen and the years of trauma that she experienced when she should have been able to depend on the ministry's protection.

After Alexandra had exhausted all the avenues available to her within the ministry to seek a remedy for the unfairness that she believed she had experienced, she contacted our office for help.

INVESTIGATION

Based on the issues that Alexandra brought to our office and the materials that she provided to support her complaint, we understood that the ministry had determined that Alexandra was ineligible for financial supports through both the AYA and the YEAF programs based on legislative and policy requirements related to Alexandra's legal status when she reached age 19.[2] According to both the CFCSA Regulation and ministry policy, the ministry may enter into an agreement for post-majority services[3] with a young adult who, up until their 19th birthday was in a youth agreement,[4] in the continuing custody of the ministry, or in the guardianship of the director of adoption or a director under section 51 of the *Infants Act*.

In Alexandra's case, she did not meet any of these three criteria at age 19 because of the ministry's decision to apply to the provincial court to permanently transfer custody to Alexandra's aunt when Alexandra was 17 years old, pursuant to section 54.01 of the CFCSA. However, Alexandra's experience suggested that the ministry may have had an obligation to consider her request for financial supports to pursue post-secondary studies, given Alexandra's life experiences, her age when the permanent order was granted, and the ministry's role in pursuing a plan for legal permanence, which served to make Alexandra ineligible for the supports she was told she would be eligible for.

In this case, we had concerns about the permanency planning process the ministry undertook on behalf of Alexandra. When the ministry determines that it is not in a child or youth's best interests[5] to return to their parent(s) or guardians, the ministry may apply to the Provincial Court of British Columbia for a permanent order that sets out an alternative legal plan for where a child or youth will reside and who will make decisions on their behalf until they reach adulthood. In cases where the ministry has decided to apply for a permanent order related to a child or youth, the ministry has a variety of legal pathways that it may pursue, including applying for a continuing custody order, which serves to permanently sever a parent or guardian's legal guardianship rights and place the child or youth in the continuing care

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2 Ministry of Children and Family Development, *Agreements with Young Adults: Policies and Procedures*, https://intranet.gov.bc.ca/assets/intranet/mcfd/ministry-services/child-protection-and-family-support/pdf/agreements_with_young_adults_policy_procedures.pdf.

3 *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 12.3.

4 *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 12.2.

5 The "best interests of a child" is the guiding principle for the application of the CFCSA. It underlies both judicial decision-making and the ministry's administration of the Act and related policies and procedures. The factors to be considered in determining the child's best interest are set out in section 4 of the Act. Examples are the child's safety and physical and emotional needs, the importance of continuity of care, and the child's cultural, racial, linguistic and religious heritage. If the child is an Indigenous child, in addition to these factors there must also be consideration of the importance of the child belonging to their Indigenous community and being able to learn about and practise their traditions, customs and language.

of the province, or applying to permanently transfer custody of a child or youth to another guardian pursuant to section 54.01 of the CFCSA. Each of these plans is associated with a variety of consequences for children and youth who are the subject of these orders, in terms of how their relationship with the ministry changes when the order is granted, when they reach the age of legal majority (19th birthday), and as they become young adults (see Appendix A).

While the ministry has a variety of legal options with respect to the order that it may apply for, it is ultimately up to the court to make the final decision about the most appropriate plan of care for the child or youth. Because of the importance of this decision, the court relies on information provided by the ministry and other parties whose interests will be impacted by the court's ruling. In addition to hearing from the ministry, the court is required to consider the ministry's plan for the child or youth in light of the views of the parents or guardians, the youth themselves (in the case of children and youth who are 12 years and older) and, in the case of children with First Nations, Inuit or Métis ancestry, the child's First Nation, Inuit or Métis community. Through this process, canvassing the views of the child or youth is particularly important, and the court must also confirm whether the child or youth has been offered the opportunity to access independent legal advice, as a way to ensure that the child or youth is fully informed of the ministry's plan and how this plan will impact them both at the time the order is made and in the future. These safeguards are set out in both the CFCSA and the *Provincial Court (Child, Family and Community Service Act) Rules*,[6] as well as in ministry policy,[7] which provides instruction for staff regarding the steps they need to take to meet these notice and informed consent requirements for the court.

In Alexandra's case, the relevant issue for our office centred on whether Alexandra's voice had been heard through the permanency planning process, what she was told about the impact of the ministry's proposed plan for her future and how the permanency plan would affect her future financial relationship with the province after she turned 19. Alexandra and her aunt consented to the ministry's application, but Alexandra made it clear to us that neither she nor her aunt felt they had been provided with an opportunity to be fully informed about the financial consequences of consenting to this application, especially in light of Alexandra's clearly stated goal of pursuing post-secondary education. Alexandra and her aunt also felt that they did not have a meaningful opportunity to provide their perspectives on the ministry's plan when it came before the court.[8]

In summary, we investigated whether the Ministry of Children and Family Development followed a reasonable process in providing Alexandra with information about her potential post-majority funding entitlements before pursuing legal permanence through a section 54.01 order. Additionally, we investigated whether the ministry had fairly determined that Alexandra was not entitled to supports under the Agreement with Young Adults (AYA) program.

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[6] *Provincial Court (Child, Family and Community Service Act) Rules*, B.C. Reg. 533/95.

[7] Ministry of Children and Family Development, *Independent Legal Advice for Children and Others Providing Consent – CFCSA or Adoption Act*.

[8] To provide context for this investigation, we reviewed the *Child Family and Community Service Act, Provincial Court (Child, Family and Community Service Act) Rules*, and relevant ministry policy, including *Policy 3.8, Returning Children and Youth to Parents or Considering Permanency Alternatives; Agreements with Young Adults: Policy and Procedures; and Independent Legal Advice for Children and Others Providing Consent – CFCSA or Adoption Act*. In addition, we considered the responses we received during this investigation from the Minister, the Deputy Minister and ministry staff.

The ministry's obligation to provide Alexandra with accurate information

During the permanency planning process, Alexandra's aunt specifically considered how Alexandra might be impacted financially in the future if she left the ministry's care. Before the section 54.01 order was granted, and while they were still exploring options for permanency, Alexandra's aunt wrote to the ministry on March 20, 2015, asking for confirmation from the social worker that Alexandra would remain eligible for post-secondary financial supports. The email from Alexandra's aunt to the social worker stated, in part:

> *I would like to know what options are for post-secondary and if there is any help from the government or not. She is looking into various schools for fine arts and even though she doesn't graduate til next year, it is important to plan ahead… I want her to know what her options are so that she can make an informed decision.*

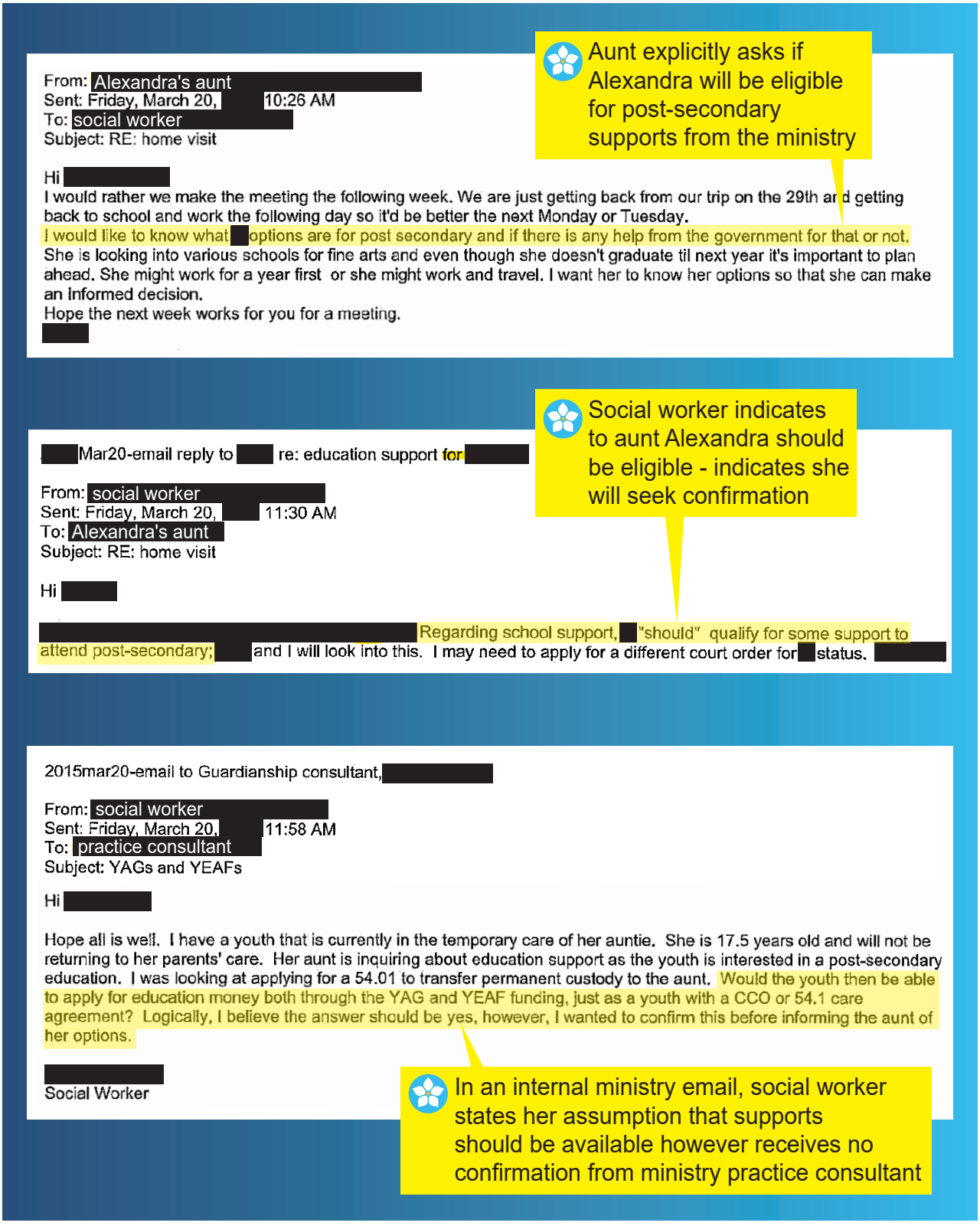
In response, the social worker told Alexandra's aunt in writing that she "should" qualify for education funding and committed to look into it further. The social worker noted that she might need to apply for a different court order to allow for the post-majority financial support. After this exchange, the social worker sought advice from a permanency planning consultant at the ministry. In an email to the practice consultant dated March 20, 2015, Alexandra's social worker wrote:

> *I have a youth that is currently in the temporary care of her auntie. She is 17.5 years old and will not be returning to her parents' care. Her aunt is inquiring about some education support as the youth is interested in a post-secondary education. I was looking at applying for a 54.01 to transfer permanent custody to the aunt. Would the youth then be able to apply for education money both through the YAG and YEAF funding, just as a youth with a CCO or 54.1 care agreement? Logically,* ***I believe the answer should be yes, however, I wanted to confirm this before informing the aunt of her options.*** *[emphasis added]*

From the records available, it does not appear that the social worker ever received a response to her request for practice support, nor does it appear that the social worker's misunderstanding that Alexandra "should" qualify for this future funding was ever corrected.

Similarly, ministry staff never told either Alexandra or her aunt that she would *not* be entitled to post-majority financial supports. As a result, both Alexandra and her aunt continued to believe that she *would* be eligible, based on what they had been told in writing. Despite not receiving any response to her email to the permanency planning consultant and based on her mistaken belief that Alexandra was eligible for post-majority financial supports, the social worker proceeded to make an application to the court to permanently transfer custody of Alexandra to her aunt pursuant to section 54.01 of the CFCSA. The court made the order transferring custody on May 14, 2015.

Figure 1: Emails regarding Alexandra's eligibility for post-secondary financial support



Supporting Alexandra's right to receive independent legal advice

The ministry is obligated, in accordance with the CFCSA,[9] the *Provincial Court (Child, Family and Community Service Act) Rules*[10] and its own internal policies, to ensure that youth over the age of 12 and prospective guardians are informed of their right to obtain independent legal advice about the consequences of court orders. Additionally, ministry policy stipulates that if an order is being sought under section 54.01 of the CFCSA, independent legal advice should be offered to the child, if 12 or older, and that this legal advice is to be funded through the ministry's contract with the Legal Services Society.[11] Because of these important legal obligations, our office expects that the ministry will ensure that staff take steps to ensure that this process occurs and document it in their records.

In this case, our review of the file information provided by the ministry confirmed that Alexandra was not informed of her right to obtain independent legal advice, nor were she or her aunt offered independent legal advice (at no cost to either party, through the ministry's contract with the Legal Services Society), in advance of providing their consent to the ministry's application for a section 54.01 order.

Further, the court file confirmed that the social worker collected Alexandra's and her aunt's signatures on the written consents, but other aspects of the formal court documents were not completed (see Figure 2). Neither Alexandra nor her aunt received independent legal advice before signing the consent form, neither had confirmed that they understood the nature and the consequences of their consent, and neither had confirmed that their consent to the legal permanency order was informed and voluntary. The highlighted sections of Figure 2 show where this information was missing from Alexandra's form, filed with the court. Her aunt's form was similarly missing this information. Regardless, the ministry applied for the section 54.01 order and, as we've described above, the court granted an order permanently transferring custody of Alexandra to her aunt on May 14, 2015.

These omissions from the information the ministry provided in support of the court application were more than mere administrative oversights. Rather, they reflected the fact, which the ministry confirmed, that Alexandra and her aunt did not receive independent legal advice before signing the consent form and therefore were unlikely to have had a full understanding of the legal implications of the court order.

Requirements related to legal advice

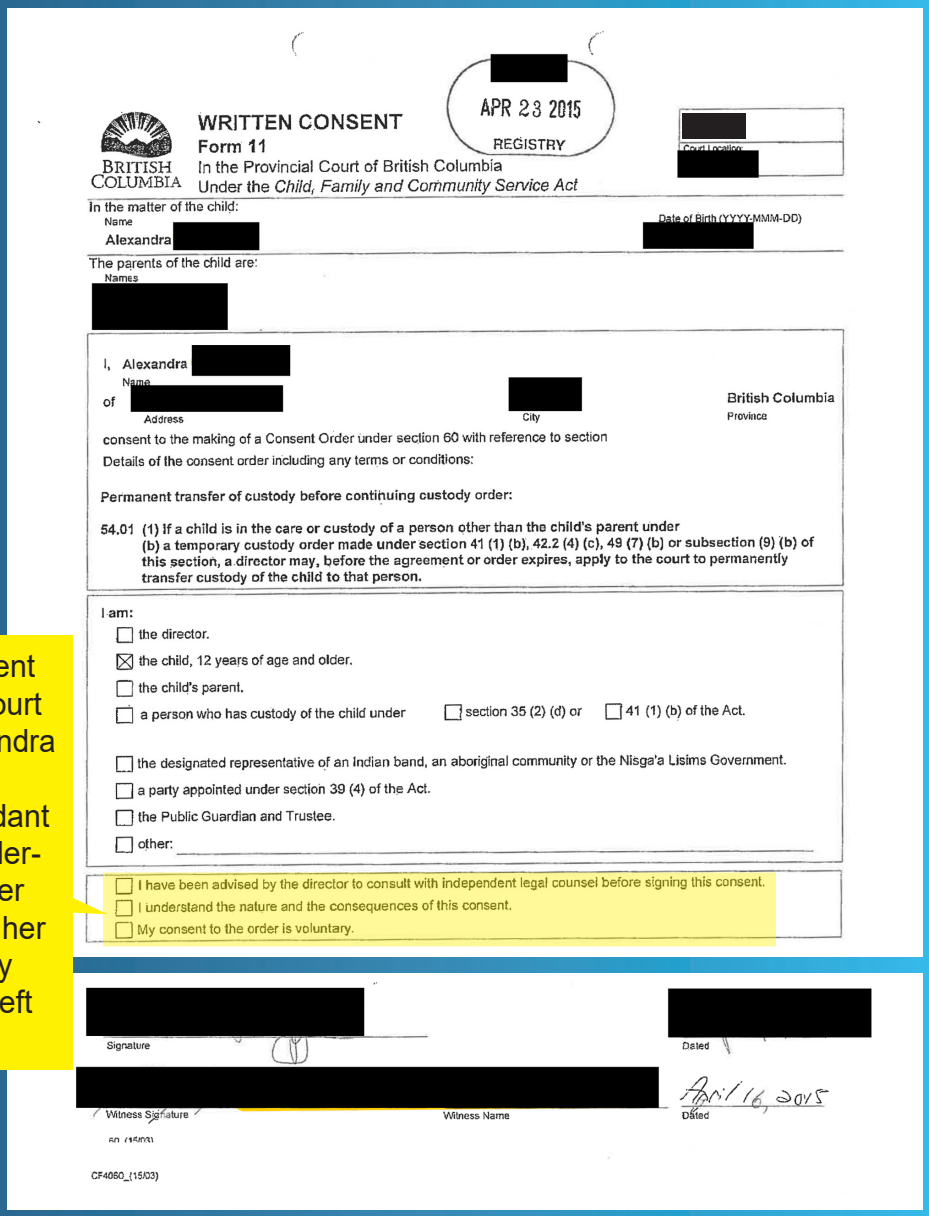
Section 60(2) of the *Child, Family and Community Services Act* allows a court to make an order transferring custody of a child or youth under s.54.01 without a hearing but only if satisfied that "each person whose consent is required... has been advised to consult with independent legal counsel before signing the consent, understands the nature and consequences of the consent, and has given voluntary consent to the order sought."

[9] *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 60(2).

[10] *Provincial Court (Child, Family and Community Service Act) Rules*, B.C. Reg. 533/95, Rule 8(13).

[11] Ministry of Children and Family Development, *Independent Legal Advice for Children and Others Providing Consent – CFCSA or Adoption Act*.

Figure 2: Form 11, Written Consent Signed by Alexandra



WRITTEN CONSENT
Form 11
In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

APR 23 2015
REGISTRY

BRITISH COLUMBIA

In the matter of the child:
Name
Alexandra [redacted]
Date of Birth (YYYY-MMM-DD) [redacted]

The parents of the child are:
Names
[redacted]

I, Alexandra [redacted]
Name
of [redacted] [redacted] British Columbia
Address City Province

consent to the making of a Consent Order under section 60 with reference to section

Details of the consent order including any terms or conditions:

Permanent transfer of custody before continuing custody order:

54.01 (1) If a child is in the care or custody of a person other than the child's parent under (b) a temporary custody order made under section 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or subsection (9) (b) of this section, a director may, before the agreement or order expires, apply to the court to permanently transfer custody of the child to that person.

I am:
- ☐ the director.
- ☒ the child, 12 years of age and older.
- ☐ the child's parent.
- ☐ a person who has custody of the child under ☐ section 35 (2) (d) or ☐ 41 (1) (b) of the Act.
- ☐ the designated representative of an Indian band, an aboriginal community or the Nisga'a Lisims Government.
- ☐ a party appointed under section 39 (4) of the Act.
- ☐ the Public Guardian and Trustee.
- ☐ other:

- ☐ I have been advised by the director to consult with independent legal counsel before signing this consent.
- ☐ I understand the nature and the consequences of this consent.
- ☐ My consent to the order is voluntary.

[redacted] [redacted]
Signature Dated

[redacted] April 16, 2015
Witness Signature Witness Name Dated

CF4060_(15/03)

Consent form sent by ministry to court did not indicate Alexandra had been advised to consult with independant counsel, that she understood the impact of her custody order or that her consent was voluntary – check boxes were left blank.

ANALYSIS

Analysis: the ministry's denial of post-majority support was unfair

The information we reviewed during this investigation shows that because of errors and omissions in the ministry's permanency planning process, Alexandra and her aunt were led to believe by the ministry that Alexandra would be eligible for post-majority services that the ministry's plan for legal permanency explicitly excluded her from. This information led us to conclude that Alexandra was treated unfairly when she couldn't access funding for post-secondary education through the AYA and YEAF programs. We determined that this unfairness occurred in several ways:

- The ministry did not take the time to ensure that the information provided to Alexandra and her aunt about Alexandra's eligibility for post-majority supports was correct.
- The permanency planning consultant did not respond to the social worker's request for verification that Alexandra should remain entitled to post-majority supports, which meant that the social worker had an incorrect belief about Alexandra's entitlements under a section 54.01 order.
- The ministry had a responsibility to Alexandra to catch and correct the incorrect information that was provided but did not do so.
- Because the ministry did not correct the social worker's initial response regarding eligibility, Alexandra and her aunt were led to believe that Alexandra would be entitled to receive post-majority education supports, when this was not the case.
- When the ministry failed to provide Alexandra and her aunt with accurate information about the limitations to the AYA and YEAF programs for children and youth who have left care through section 54.01 orders, it neglected to ensure that Alexandra was aware of what she might be giving up in terms of financial support from the province.
- Despite legal and policy requirements to ensure that Alexandra and her aunt were explicitly informed about their right to obtain independent legal advice to advise them of the scope of their rights should the section 54.01 order be granted, the ministry confirmed that staff failed to take this compulsory step during the permanency planning process.
- When collecting Alexandra and her aunt's signatures on the written consent forms that the ministry provided to the court, staff failed to confirm that both parties understood the nature and consequences of their consent and that their consent to the order was voluntary, as is required by the *Provincial Court (Child, Family and Community Service Act) Rules*.

Ministry staff gave incorrect information in responding to direct questions from Alexandra's aunt about the financial consequences of pursuing a section 54.01

order. It is possible that this error was made inadvertently. Nevertheless, ministry staff lacked the necessary practice knowledge to ensure that they properly applied the principles of the legislation and policy with respect to permanency planning and engagement with court processes in Alexandra's case.

As a result, the ministry did not meet its responsibilities to both Alexandra and the courts by ensuring that Alexandra understood the nature and consequences of consenting to the ministry's application for permanent transfer of custody under section 54.01.

The ministry's consideration of Alexandra's best interests

While the ministry has, during our investigation, acknowledged some of its shortcomings in practice concerning permanency planning and making referrals for independent legal advice, it also maintained that Alexandra did not qualify for the AYA or YEAF programs based on its policy relating to these benefits. The ministry further defended its actions in Alexandra's case by asserting that current policy does not support keeping children and youth in care for financial reasons. Citing its policy with respect to Agreements with Young Adults (AYA),[12] the ministry told us that "a child cannot be entered into, or maintained on a [CCO or YAG[13]] for the sole purpose of retaining eligibility for an AYA." It is important to note that this policy statement does not supersede the ministry's statutory obligations to consider each child and youth's best interests.[14]

Additionally, the ministry told us that, in its view, outcomes are better for youth who have had custody permanently transferred to extended family than for youth leaving the ministry's care at age 19, because youth leaving the ministry's care do not have the same support network in place post-majority. In short, the ministry suggested that when applying a best interests test to the circumstances for youth who have the option of remaining in the care of the ministry versus having custody transferred to extended family, a transfer of custody is generally considered to be in the youth's best interests. However, the ministry offered no evidence to confirm that it considered this question in the context of Alexandra's permanency planning and in fact, the evidence showed that Alexandra's primary interest was in preserving her entitlement to post-majority supports.

When the section 54.01 order was granted, Alexandra had been involved with the child welfare system for much of her life. She had experienced significant physical and emotional trauma related to years of exposure to domestic violence, alcohol misuse and physical abuse, and attachment disruptions associated with being legally removed from her family five times. All of this information was known to the ministry, and in fact helped to form the basis for the ministry's conclusion that Alexandra could not return

[12] Ministry of Children and Family Development, *Agreements with Young Adults: Policies and Procedures*.

[13] A youth agreement (YAG) under Section 12.2 of the *Child, Family and Community Service Act* offers an out-of-care alternative to youth 16–18 years of age who need assistance. Through an independence plan, youth agreements can provide residential, educational or other support services, and financial assistance, while supporting the youth's safety and well-being through one-to-one support workers and/or group life skills programs. A continuing custody order (CCO) places a child or youth in the permanent care of the ministry. After a CCO is made, a child or youth may be adopted or have guardianship permanently transferred to a caregiver under s.54.1 of the *Child, Family and Community Service Act*.

[14] *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 4.

to her family home because of the harm that she had experienced, and the likelihood that this harm would continue.

Additionally, after turning 19, because of the physical injuries that Alexandra sustained while in the care of her birth parents, Alexandra required extensive physical therapy to address soft tissue and skeletal damage to her back and spine. Further, because of the trauma that she experienced during her early childhood and teen years, Alexandra told both our office and Minister Dean that she had developed a severe eating disorder, which required treatment after she reached age 19. Alexandra told us that she could not access ministry assistance to pay for this necessary care and so was required to pay privately for rehabilitative programs and services.

We agree that the ministry has a responsibility to consider best interest factors under the CFCSA when engaging in permanency planning for children and youth. The facts of Alexandra's case, however, suggest that the ministry's planning process did not include proper consideration of the totality of Alexandra's individual interests, which included Alexandra's future financial interests, her stated educational goals and the demonstrated likelihood that she would require ongoing services to support her physical and emotional recovery from injuries she had suffered while in her parents' care, which could be funded by the ministry.[15] In addition, in Alexandra's case, nothing changed materially in her living circumstances once the section 54.01 order was granted. Alexandra resided with her aunt during the time she was in the interim care of the ministry after she was removed on April 9, 2014, and during the time that the ministry temporarily transferred custody to her aunt while the ministry determined whether reunification with Alexandra's parents was possible. The section 54.01 order made permanent her existing living arrangements, and the ministry continued to provide monthly financial support to Alexandra's aunt until Alexandra's 19th birthday, at the same rate as it had prior to the permanent transfer of custody.

While some youth and their families may decide that having the autonomy to make important life decisions independently from the state may outweigh future financial benefits, this was not the case for Alexandra. As Alexandra stated clearly in her letter to Minister Dean, had she known that she would not be eligible for financial supports to pursue a better life for herself, she would have chosen differently.

While we understand the ministry's position about the many potential benefits for children and youth who can reside in kinship care versus government care, Alexandra's case represents a failure on the part of the ministry to consider Alexandra's individual best interests versus a more abstract and impersonal consideration of what is best for many children and youth. In this case, the ministry did not discharge its duty to ensure that Alexandra's best interests were protected by making sure that both she and her aunt had sufficient and accurate information about the consequences of the section 54.01 order. Further, whatever the ministry's views about its permanency planning in Alexandra's case more generally, it is clear that the ministry

[15] In addition to providing financial supports for post-secondary education, the AYA program offers opportunities for former youth in care to participate in individualized rehabilitative programs aimed at the assessment or treatment of health issues, which may include mental health or substance use issues and could involve cultural healing and wellness. In Alexandra's case, attending a treatment program to address her eating disorder could have been funded through this program. Additionally, while accessing programming through an AYA, program recipients receive MSP coverage, dental coverage and optical coverage funded by the province. See Ministry of Children and Family Development, *Agreements with Young Adults Online Tool and Practice Enhancer: Extended Benefits*, November 2019.

had a primary obligation to ensure that Alexandra's interests were protected and that her voice was heard through its permanency planning process.

Despite the ministry's contention that it is "generally" better for children to be moved out of care, it is clear that, in accordance with the CFCSA, the ministry needed to consider Alexandra's best interests within the context of her lived experiences, its knowledge of her experiences while in the ministry's care, and Alexandra's circumstances at the time the permanency planning process took place.

As this case demonstrates, the permanency planning process for a section 54.01 order lacks sufficient safeguards for ensuring that youth like Alexandra will have their interests protected. This absence of process regarding section 54.01 orders can be contrasted with the well-developed processes the ministry has developed for section 54.1 orders (permanent transfer of custody *after* a continuing custody order) – where the ministry knows that its permanency planning process and proposed solutions will be reviewed by the Public Guardian and Trustee (PGT) to ensure that its primary obligation to the child or youth is satisfied.[16] In the case of section 54.01 orders, there appears to be no formalized process to consider these same sets of individualized criteria for planning for a youth's best interests, as occurs for section 54.1 orders, even though the ministry has the same obligation to consider the totality of a child or youth's best interests as required by the CFCSA.

In Alexandra's case, this meant that the ministry was required to complete a comprehensive assessment of her life circumstances (which included considering her history, her current and projected needs, and her expressed views and goals), answer Alexandra's and her aunt's questions, and ensure that they both understood the consequences for Alexandra of the ministry's plan to seek a section 54.01 order, which directly impacted her future financial entitlements.

In our view, it was inappropriate that the ministry did not consider Alexandra's future financial needs and longer-term educational goals when planning for her, considering all that it already knew about her and her family. This is precisely what the ministry needed to do to comply with the CFCSA and its own permanency planning policies. By failing to appropriately consider Alexandra's individual circumstances, her clearly stated interest in pursuing post-secondary education, and her lengthy history of ministry involvement (including several years in foster care), the ministry failed to satisfy its responsibility to consider the needs, experiences and interests of Alexandra herself.

Further, the ministry's policy statement regarding the use of AYA in permanency planning and its stated intention to consider kinship planning above all other options "generally" ought not to supersede the CFCSA or *Provincial Court (Child, Family and Community Service Act*) *Rules*, which were designed to ensure that Alexandra's and her aunt's voices were heard by the court, as the final decision-maker on the matter. Simply stated, when considering the CFCSA and the court rules, Alexandra and her aunt were independent individuals who stood to be significantly impacted by the court's decision, individuals whose interests and views must be considered independently of the perspectives of other parties to the proceedings, including the ministry.

[16] See *Protocol Agreement – Public Guardian and Trustee and Directors under the CFCSA and Adoption Act*.

CONCLUSION

Our investigation found that the ministry acted unfairly in its permanency planning process for Alexandra in several ways. The ministry's unfair actions prejudiced Alexandra's interests and reflected shortcomings in the ministry's internal process, resulting in Alexandra and her aunt receiving inaccurate information about the consequences of the section 54.01 order. The unfair treatment also deprived Alexandra and her aunt of the opportunity to obtain ministry-funded independent legal advice about the consequences of the order. Further, Alexandra made it clear to both the ministry and to our office that she believed her post-majority funding entitlements had been safeguarded, based on the information she received from the ministry before the section 54.01 order was granted.

When the permanency planning process is viewed as a whole, it is clear that the ministry did not explain the consequences of the section 54.01 permanency plan to Alexandra and her aunt and did not answer their questions accurately regarding the post-majority supports that Alexandra would be eligible for in the future. These unfair processes resulted in Alexandra being unfairly denied access to post-majority supports that would have otherwise been available to her.

Finding: The Ministry of Children and Family Development applied unfair procedures in relation to its permanency planning for Alexandra, contrary to section 23(1)(a)(v) of the *Ombudsperson Act*, because:

a. The ministry did not provide Alexandra with accurate information about her post-majority entitlements when her aunt asked direct questions about these supports during the permanency-planning phase for the section 54.01 order

b. The ministry did not offer or provide an opportunity for Alexandra or her aunt to obtain independent legal advice to inform their understanding of the consequences of the section 54.01 order in advance of providing their consent

c. The ministry did not meet its obligations under the *Provincial Court (Child, Family and Community Service Act) Rules* to advise Alexandra and her aunt to consult with legal counsel in relation to the section 54.01 court process

d. The ministry's actions caused it to unfairly deny Alexandra's eligibility for post-majority financial supports, to which she would have been entitled but for the errors identified in these findings

RECOMMENDATIONS

In May 2023, I made five recommendations, both individual and systemic, to address the finding of unfairness described above.

Recommendation to remedy the unfairness to Alexandra

I acknowledge that the ministry's initial denial of Alexandra's application for AYA and YEAF benefits was consistent with the CFCSA regulation and its own policy. However, in considering Alexandra's life experiences in their entirety, as well as the ministry's own role in creating the circumstances that led to its denial of Alexandra's application, the ministry has failed to take responsibility for its procedural errors, which resulted in Alexandra being ineligible for the post-majority educational support and extended health benefits she needs to be successful. Given the circumstances of Alexandra's case, I have recommended that the ministry compensate Alexandra by paying an amount to her that is equal to the post-majority entitlements she could have received had the ministry not acted unfairly.

Recommendation 1: The Ministry of Children and Family Development:

a. Calculate the total amount of funds that Alexandra would have been eligible for:
   i. under the AYA program, calculated in a manner that is consistent with current funding formulas for shelter and support costs, including extended health benefits, and
   ii. through the YEAF program or AYA funding for education-related expenses, calculated in a manner consistent with those programs.

b. When the sums are calculated, share them with my office, with an itemized accounting of the constituent entitlements.

c. After my office has reviewed the amounts calculated under (a), pay those sums to Alexandra no later than September 1, 2023, together with interest under the *Court Order Interest Act*, calculated from the dates these sums would have been payable under the AYA and YEAF as applicable.

Systemic recommendations

I have also recommended that the ministry undertake systemic work to address the policy and practice problems that I have identified in this report. This systemic work includes:

- conducting an audit to identify and address other cases where these kinds of unfair practices may have occurred
- developing and implementing a strategy to ensure that staff are aware of and appropriately communicate information about the consequences of various permanency planning options
- developing and implementing a strategy to ensure that staff are aware of their responsibility to provide a referral for independent legal advice
- working with the PGT to ensure better oversight of transfers of custody under section 54.01

Audit of ministry records

Unfortunately, it is likely that Alexandra's case is not unique. We have received other complaints from former youth in care who have had similar experiences and assert that they too were given inaccurate information regarding their financial entitlements before consenting to the ministry's application for legal permanence. Because of this, I am concerned that this issue may be more widespread than this one case example.

I am especially concerned about how the fairness issues highlighted in Alexandra's case may disproportionately impact Indigenous children and youth. Permanency processes like adoption and Continuing Custody Orders were used as tools of colonial violence against First Nations, Métis and Inuit people, and many Indigenous communities are more comfortable with other forms of guardianship arrangements, such as a section 54.01 order.[17]

This perspective is supported by legal permanency trends in British Columbia since 2015. As noted in the Representative for Children and Youth's 2017 *B.C. Adoption and Permanency Options Update*, between 2015 and 2018, of the 1014 children and youth who achieved legal permanence through a permanent transfer of guardianship pursuant to section 54.01 of the CFCSA, 604 (nearly 60 percent) were identified as having Indigenous ancestry. During the same period, 292 of the 730 children and youth who were placed for adoption were identified as having Indigenous ancestry.[18] I am concerned that errors made by ministry staff in informing children and youth and their families of the consequences of these arrangements, however inadvertent or unintentional they may have been, have potentially caused significant disadvantage to Indigenous children and youth and their families with respect to their post-majority financial entitlements, for reasons that are similar to those we have identified in Alexandra's case.

For this reason, I am recommending that the ministry conduct an audit that seeks to better understand the scope of the impact of

[17] See Adoptive Families Association of BC, *Guardianship: A different option for permanency*, https://www.bcadoption.com/resources/articles/guardianship-different-option-permanency; Ministry of Children and Family Development, *Aboriginal Policy and Practice Framework*, 2016, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/indigenous-cfd/abframework.pdf, 6–7; Representative for Children and Youth, *B.C. Adoption and Permanency Options Update*, August 2019, https://rcybc.ca/wp-content/uploads/2019/09/rcy_adoptionupdate-final-aug2019_0.pdf, 7; Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions*, November 2016, https://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf, 134–135.

[18] Representative for Children and Youth, *B.C. Adoption and Permanency Options Update*, August 2017, https://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2017_2/683581/rcy_adoptionupdate-dec2017.pdf.

the practice issues that have been identified by this investigation and have already been acknowledged by the ministry.

Further, conducting an audit would be consistent with the government's current action plan in response to the *UN Declaration on the Rights of Indigenous Peoples*. As part of a cross-governmental plan to meaningfully engage in reconciliation work across ministries, the government committed to "co-develop and implement measures to support improved education outcomes of current and former First Nation children and youth in care, including meaningful data collection to inform policy planning and service delivery."[19]

According to the action plan, this work is to be done jointly by the Ministry of Education and Child Care, the Ministry of Children and Family Development, and the Ministry of Advanced Education and Skills Training (currently known as the Ministry of Post-Secondary Education and Future Skills). It is my view that completing an audit, as I have recommended, is directly relevant to this commitment, and will allow for the ministry to collect meaningful data to improve service delivery to Indigenous children and youth in government care, consistent with this plan.

During our investigation, the ministry told us that it was not prepared to conduct an audit, suggesting that it was unable to conclude that this would be of benefit. In explaining its refusal, the ministry indicated that it did not believe that the recommended audit would provide conclusive results because of the potential for legal advice to have been offered and declined, but not documented by ministry staff. Stated plainly, the ministry confirmed that it lacks the faith in its own record-keeping practices to be able to accurately understand what transpired during the permanency-planning phases for hundreds of children and youth who were in ministry care over a 10-year period. Not only does this represent an acknowledgment of significant practice issues that have serious implications for many individuals, families and communities on many levels, but I am also concerned that the ministry is simply unwilling to make the effort to gather whatever data might be available to it and improve practice moving forward.

I question how the ministry's position is consistent with government's publicly stated commitment to "continue improving B.C.'s in-care system to ensure that it meets the unique needs of every child and youth."[20] Further, I expect public authorities to maintain appropriate records to document key practice steps to demonstrate that they are meeting legislative and policy requirements. If the ministry has identified flaws in its record-keeping, it has a duty to address them. Regardless of the record-keeping deficiencies that the ministry has identified, I expect that a useful audit could proceed to identify as many similarly affected youth as possible, even if not all. Despite the ministry's stated challenges, it is my

[19] Province of British Columbia, *Declaration Act Action Plan*, 2022–2027, 4.18, https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf. In the context of this commitment, we also recognize Call for Justice 12.11 of the National Inquiry into Murdered and Missing Indigenous Women and Girls, which states, "We call upon all levels of government and child welfare services for a reform of laws and obligations with respect to youth "aging out" of the system, including ensuring a complete network of support from childhood into adulthood, based on capacity and needs, which includes opportunities for education, housing, and related supports. This includes the provision of free post-secondary education for all children in care in Canada." (*Reclaiming Power and Place: The Final Report of the National Inquiry into Murdered and Missing Indigenous Women and Girls*, 2019, https://www.mmiwg-ffada.ca/final-report/)

[20] Hon. Mitzi Dean, Minister of Children and Family Development, Mandate Letter, December 7, 2022, https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/cfd_-_dean.pdf.

view that this audit is an important part of ensuring that the ministry is working toward increased transparency and accountability and improved service delivery for the people of British Columbia.

Recommendation 2: The Ministry of Children and Family Development conduct an audit, to be completed by December 31, 2023, to identify former youth in care for whom legal permanence has been obtained through a section 54.01 order and who may have been denied the opportunity to receive independent legal advice as part of the permanency planning process, akin to what occurred in this case:

a. The ministry include in the terms of reference for this audit process that the audit canvass:
   i. whether youth 12 years of age and older were provided with an opportunity to obtain independent legal advice as part of the permanency planning process
   ii. whether prospective guardians were provided with an opportunity to obtain independent legal advice, as part of the permanency planning process
   iii. whether members of both groups were provided with details regarding the entitlements available to them should legal permanency be obtained, as per the ministry's internal guidance documents outlining the consequences of the different types of legal permanency arrangements
b. The ministry report the audit results and outcomes to my office by April 1, 2024.

Changes to ministry practice

The case notes outlining the social worker's discussions with Alexandra's aunt, and their attempt to communicate with the practice consultant, demonstrated ministry staff's uncertainty about the scope of the section 54.01 order and its impact on Alexandra. When we spoke with the ministry about this practice issue, the ministry acknowledged that the issue is more widespread than just Alexandra's case. Because of the profound and lasting impact of these permanent legal orders for vulnerable children and youth, the ministry must ensure that front-line staff are aware of the consequences of the array of permanency options with respect to future financial entitlements. It is also incumbent on the ministry to ensure that those who stand to be directly impacted by these orders are consistently provided with accurate information and access to independent legal advice prior to being asked to give their consent to the ministry's application. This could be achieved through the ministry developing a formal structure to ensure that staff are aware of and supported in completing these aspects of their statutory duties. I have made two recommendations that seek to address the demonstrated and already acknowledged shortcomings in the ministry's practice with respect to this aspect of permanency planning.

Recommendation 3: By December 31, 2023, the Ministry of Children and Family Development develop and implement a strategy to ensure that staff are aware of the various benefits and limitations associated with the variety of permanency plans available so that they can effectively communicate these differences to the children, youth, guardians and families who stand to be impacted by this planning.

Recommendation 4: By December 31, 2023, the Ministry of Children and Family Development develop and implement a strategy to ensure that staff are aware of their responsibility to provide a referral for independent legal advice, as required by legislation and the ministry's policy.

Improved oversight of permanency planning

Alexandra's case has demonstrated that the ministry's policy framework risks having insufficient safeguards to ensure that the best interests of children and youth are properly considered and that their voices are heard during the permanency planning process. Alexandra's case demonstrates that circumstances can and do arise where the existing mechanisms do not offer enough assurance that the voices and perspectives of children and youth will be heard by the court.

In some cases where a child is in the temporary care of the ministry, the court may, on application, appoint the Public Guardian and Trustee as the child's temporary property guardian.[21] The involvement of the PGT means that, if a transfer of custody under section 54.01 is being considered, the PGT has a responsibility to discuss with the ministry and the prospective guardian the child's current and future financial needs, including future services to be provided by the ministry. In addition, the PGT provides formal consent (or withholds consent) for the transfer of custody.[22] A similar process applies to a child in continuing custody who is the subject of a transfer of custody under section 54.1, where the PGT, as the child's property guardian, is required to consent to the formal court order.

In Alexandra's case, however, the PGT was not appointed as her temporary property guardian prior to the permanency planning occurring. In the absence of a formalized mechanism to ensure that the ministry exercised due diligence in its planning to calculate both current and projected need (such as in the process described above involving the PGT), the ministry failed to adequately consider what was actually best for Alexandra, given the experiences that she shared in detail with both Minister Dean and my office.

As noted above, a transfer of custody under section 54.01 will often be in the best interest of children and youth who are temporarily under the ministry's care. Nevertheless, the significance and finality of the order means that the financial consequences of the order need to be carefully and independently reviewed, by considering the distinct perspectives and needs of the individual youth. I am not satisfied that the differences between section 54.01 and section 54.1 orders are such that the ongoing absence of PGT oversight of section 54.01 orders can be justified moving forward. Both orders result in a permanent transfer of custody that can have significant financial consequences for the children and youth involved and for their families.

There are many precedents in British Columbia law for providing the PGT with notice when there is an application to a court for an order that could impact a child or youth's money or property or right to money or property. These apply even where the PGT is not the property guardian for the child or youth. Creating such an obligation for section

[21] Pursuant to CFCSA, s. 58.

[22] Protocol Agreement in Respect of Roles and Responsibilities of the Public Guardian and Trustee, and the Directors under the *Child Family and Community Service Act (CFCSA) and Adoption Act*, January 2021.

54.01 orders would be consistent with the policy rationale in those other laws – that notice to the PGT provides an extra measure of oversight and protection so that the impact of a proposed court order on the child's or youth's financial interests can be identified.

The PGT has also raised concerns about financial oversight of out-of-care arrangements for children and youth, stating in its 2020/21 annual report:

> *An increasing number of children and youth are supported by extended families through out of care arrangements which do not include authority for provision of property guardianship protections… The PGT will continue to advocate for other legal reform that relates to its mandate such as defining the role of a public property guardian of children and ensuring the legal and financial interests of children and youth not under continuing custody orders are protected.*[23]

For these reasons, I have recommended that the ministry work with the PGT, seeking legislative amendments as necessary, to develop a formal process ensuring that the PGT is notified of pending 54.01 applications and giving the PGT an opportunity to review the proposed arrangements and provide its opinion to the court to ensure that the impact of the order on the child or youth's financial interests is considered. We would expect government to provide the PGT with adequate resources and to ensure that it has access to all information necessary to carry out this function meaningfully.

Recommendation 5: The Ministry of Children and Family Development work with the Public Guardian and Trustee to establish, by March 31, 2024, an appropriately resourced process to

a. notify the PGT of all proposed transfers of custody under section 54.01 of the *Child, Family and Community Service Act*
b. ensure that the PGT has access to information necessary to meaningfully review the impact of the proposed section 54.01 order on a child or youth's financial interests
c. provide the PGT's opinion to the court as part of the section 54.01 application process

If needed to give effect to these arrangements, the Minister of Children and Family Development bring forward in the Legislative Assembly amendments to the *Child, Family and Community Service Act.*

[23] Public Guardian and Trustee of British Columbia, 2020–2021 Annual Report, https://www.trustee.bc.ca/reports-and-publications/Documents/PGT_2020-2021_Annual-Report.pdf, 41.

APPENDIX A:

Permanency planning options that were available to the ministry at the time that planning was occurring for Alexandra, and the post-secondary financial supports available

Permanency planning options that were available to the ministry at the time that planning was occurring for Alexandra, and the post-secondary financial supports available

	Permanency Option the Ministry Proposed for Alexandra	Other Permanency Options for Alexandra	
	Section 54.01 Permanent Transfer of Custody	**Continuing Custody Order Granted- Youth turns 19 in Government Care**	**Youth turns 19 while on Youth Agreement (YAG)** (An alternative out-of-care plan for youth, a YAG can provide residential, educational or other support services and direct financial assistance while supporting the youth's safety outside of their family home)
Agreement with Young Adults (AYA) Program This program provides financial supports to help finish high school, go to college or university, or take a rehabilitation or life-skills program. Program funds can be used to cover the costs of living expenses, childcare, tuition fees, and health care while recipients participate in an approved program.		✓	✓
Provincial Tuition Waiver Program This program provides financial support for tuition fees at one of 25 approved* post-secondary institutions or programs in BC.	✓	✓	✓
Youth Educational Assistance Fund (YEAF) This grant can cover expenses related to post-secondary expenses up to $5,500 per program year for 4 years.		✓	

* We note that in Alexandra's case, while she was eligible for the Tuition Waiver Program, based on her legal status at age 19, her program of choice was not one of the approved post-secondary institutions. Because of this, Alexandra was effectively not able to receive financial supports from any of the three post-majority support programs offered by the ministry at the time that she was accepted to a post-secondary institution.

APPENDIX B:

Response from Ministry of Children and Family Development

Response from Ministry of Children and Family Development

BRITISH COLUMBIA

VIA E-MAIL
Ref: 279422
OMB Ref: 21-191964

June 13, 2023

Jay Chalke
Ombudsperson
Province of BC
[redacted]

Dear Jay Chalke:

Re: Investigation Of Complaint About Denial Of Financial Supports Under The Agreements With Young Adults Program

Thank you for your letter dated May 23, 2023, regarding your investigation into a complaint about the denial of financial supports under the Agreements with Young Adults (AYA) program in the wake of a section 54.01 Permanent Transfer of Custody to Other order granted in 2015. I am pleased to respond on behalf of the Honourable Mitzi Dean, Minister of Children and Family Development.

I understand that you intend to release a public report and are requesting the Ministry of Children and Family Development's (MCFD) representations and an administrative fairness review of your draft report. I have outlined MCFD's response to your recommendations below and attached MCFD's administrative fairness feedback to this letter.

MCFD welcomes reports and recommendations from our oversight bodies as they offer valuable insight into the child-serving systems and provide recommendations for strengthening support and services for children, youth and families. The situations shared by children, youth and families are a driving force in changes being made to legislation and policy to ensure services and supports are evolving to meet identified needs.

Under Budget 2022, the government announced enhanced youth transitions services and benefits, now known as the Strengthening Abilities and Journeys of Empowerment (SAJE) program, to be fully implemented by April 2024. The SAJE program includes a new comprehensive suite of supports and services for eligible youth and young adults up to their 27th birthday. This program provides focused transition planning for eligible youth and young adults (aged 14 to 25) in and from care. SAJE provides a suite of services intended to support youth and young adults as they transition from care, including:

…/2

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- A no-limit earnings exemption for young adults so income from employment does not affect benefit calculations;
- Increases in dental coverage available to young adults participating in SAJE programming by $300 to $1,000 annually;
- Enhanced optical coverage;
- A $600-a-month rent supplement program to help young adults from care to live independently, with 50% of the supplements available to Indigenous young adults;
- Increasing the maximum duration of SAJE supports and services from 48 to 84 months, up to the age of 27;
- Extending temporary housing supports to allow young people to continue to stay in their home past the age of 19 and up to their 21st birthday;
- Removing the age cap for the Provincial Tuition Waiver Program and introducing a new grant of up to $3,500 per year to support tuition waiver program students;
- Access to life-skills, training, counselling, and cultural programming;
- Navigators and Guides who support youth and young adults in and from care, their guardianship workers and support circles in transition planning and accessing services from ages 14 to 25; and
- An unconditional income supplement at age 19, up to one's 20th birthday.

When the legislative changes come into force in 2024, the eligibility for SAJE will expand to include all care statuses as long as the young adult had 24 months of cumulative time under the care statuses between the ages of 12 and 19. Eligibility will also include young adults who had a permanent transfer of custody or an adoption between ages 12 and 19 or who were under a Youth Agreement or a Continuing Custody Order when they became 19 years old. These changes are all being made through legislation and policy and do not apply retroactively. With respect to the complainant's eligibility for post majority benefits from MCFD, she will be eligible for SAJE support when the expanded eligibility is in effect. She is currently eligible for the Tuition Waiver Program (funded by Advanced Education) [redacted]

As stated in my previous letter to you, dated October 31, 2022, MCFD does not intend to implement recommendations 1 and 2. Financial benefits are not considered a reason to be brought into or to remain in-care. The primary focus of MCFD is to support the well-being of all children and youth in British Columbia to live in safe, healthy and nurturing families, and to be strongly connected to their communities and culture. MCFD does not make legal permanency decisions for children and families in isolation. There are steps built into our court system to ensure that all legal procedures have been followed before an order is granted, including the responsibility of the court under s. 54.01(7) of the *Child, Family and Community Service Act* when making an order to permanently transfer custody of a child to a person other than a parent.

…/3

We accept recommendations 3 and 4 with the caveat that the proposed timelines for these recommendations may not be attainable. For recommendation 3, we have proposed that the deadline be moved from December 31, 2023, to June 30, 2024, to align with the anticipated date for Royal Assent for the proposed legislative changes. These legislative changes are necessary to expand eligibility for the SAJE program and the new and expanded supports and services. An extension may be required for recommendation 4 to fulfill MCFD's commitment to engage with our Indigenous partners and rightsholders on changes to policy.

MCFD will not implement recommendation 5. As you know, the *Child, Family and Community Service Act* (CFCSA) requires the consent of the Public Guardian and Trustee (PGT) for CFCSA orders that permanently transfer custody of a child, but only in those situations where the PGT is acting as the property guardian for the child. MCFD does not support expanding the property guardianship role for all out-of-care orders and agreements, as the child's parents retain the responsibilities of a property guardian in such situations.

If you have any questions about this response, please contact James Wale, Deputy Director of Child Welfare, MCFD, by phone at [redacted] or via e-mail at [redacted]

Sincerely,

Allison Bond
Deputy Minister for Children and Family Development

pc: Honourable Mitzi Dean
Cory Heavener, Assistant Deputy Minister/Provincial Director of Child Welfare
James Wale

Enclosures (1)

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Office of the Ombudsperson | PO Box 9039 Stn Prov Govt | Victoria, B.C. V8W 9A5

General Inquiries: 250 387-5855 (Victoria) or 1 800 567-3247 (Rest of B.C.) | Fax: 250 387-0198

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