

Provincial Advocate
for Children & Youth

L'intervenant provincial
en faveur des enfants & des jeunes

**Office of the Provincial Advocate for
Children and Youth**

**Submission to the Standing Committee
on Regulations and Private Bills Re: Bill 88,
Child and Family Services Amendment Act
(Children 16 Years of Age and Older), 2013**

An Act to amend the Child and Family Services Act with
respect to children 16 years of age and older

December 4, 2013

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Submission by the Office of the Provincial Advocate for Children and Youth re: Bill 88, Child and Family Services Amendment Act (Children 16 Years of Age and Older), 2013

About the Office of the Provincial Advocate for Children and Youth

The Office of the Provincial Advocate for Children and Youth (“Advocate’s Office”) is an independent office of the Legislative Assembly of Ontario. Created by statute in 2007, the Advocate’s Office was established, among other functions, to provide an independent voice for children and youth and to educate children, youth and their caregivers about the rights of children and youth. The Office partners with children and youth to bring issues forward and strives to be an exemplar in child and youth participation. Section 16 (f) of the Provincial Advocate for Children and Youth Act, 2007 allows the Advocate to provide advice and make recommendations to governments, ministers, agencies and service providers responsible for services under the Child and Family Services Act. It is under this section that this submission is made.

Context

The Office of the Provincial Advocate for Children and Youth is responsible for elevating the voices of the children and youth in and on the margins of Ontario’s systems of care. The children and young people the Office is accountable to include those connected in some way to the child welfare, children’s mental health, youth justice, developmental services or community services systems and those organizations that receive funding from the Ministry of Children and Youth Services. Other children and youth in the Office’s mandate include pupils in the provincial demonstration schools for the deaf, deaf-blind and severely learning disabled as well as First Nation children and youth, and children with special needs.

The legislation that gives the Provincial Advocate the power and authority to advocate on behalf of those young people who are already receiving government services also requires the Office to act on behalf of the young people who are not. The purpose of Bill 88 is to offer the protection and/or support of the province to youth aged 16 and 17 who are in situations, through no fault of their own, where they must leave their home.

In November 2011, the Office of the Provincial Advocate for Children and Youth partnered with children and youth “in and from care” to organize and hold public hearings at Queen’s Park to speak about achieving better outcomes for children and youth leaving care. We received 183 submissions and had more than 300 people attend the first day of the Hearings and 500 people attend the second day. Many, in fact hundreds, of young people in and from care from across the Province attended the Hearings and many also made submissions. After the Hearings, the youth organizers wrote ***My REAL Life Book: Report from the Youth Leaving Care Hearings***

and presented it not only to the Minister of Children and Youth Services but also to the Legislative Assembly of Ontario through representatives from each of the political parties.

One aspect of the submissions highlighted in *My REAL Life Book* was the recommendation that the “age of protection” should be extended to 18. Currently, a young person who has not received services from a child welfare agency prior to his or her 16th birthday is not eligible child welfare services if he or she needs these services later. Bill 88 is a step in the right direction. The Office of the Provincial Advocate for Children and Youth supports the intent and the principle of the Bill and is suggesting a number of amendments.

My REAL Life Book recommended the Province should work with youth in and from care and other stakeholders to complete an “Action Plan for Fundamental Change”. The recommendation was accepted and a Working Group was established comprised of equal numbers of young people and adults. The resulting *Blueprint for Fundamental Change to Ontario’s Child Welfare System: Final Report of the Youth Leaving Care Working Group* took a similar position on the plight of 16 and 17 year olds in these circumstances, noting that it is, “essential and urgent that the Ministry extend the age of protection to 18”.¹ Since the report was written, many young people have continued to voice their support for this recommendation.

We have heard from young people after their siblings were removed from the family home. Being 16, they were too old to be admitted to care, and were left in the home. Forced by circumstances to live on their own, they often did. We have heard from young people, 16 and 17 years of age, who live in our Province’s homeless shelters. For their own well-being and safety, they felt they had to make the decision to leave home and would have grasped at the chance to live in a foster home. We have heard from young people, 16 years of age, who have come to Canada as refugees, unaccompanied by an adult, with nowhere to turn, who would have relished the supports of the child welfare system. Increasing the age of protection is an invaluable option for these young people.

My REAL Life Book centred on a number of key themes. One of those themes was young people in care, “...are left out of our lives”.² The change Bill 88 will make to the *Child and Family Services Act* must be seen as a tool, an option for 16 and 17 year old youth to make use of. Yes, they may be in need of protection, certainly they may be in need of support, but it is crucial that they have the ability and power to control the kind of service and support they receive including none as an option, if that is what they choose. They must be made to feel they are in control of their own lives.

¹ Canada, Ontario, Ministry of Children and Youth Services, *Blueprint for Fundamental Change to Ontario’s Child Welfare System: Final Report of the Youth Leaving Care Working Group*, (Ontario: January 2013) p 21

² Our Voice, Our Turn and Office of the Provincial Advocate for Children and Youth, *My REAL Life Book: Report from the Youth Leaving Care Hearings* (Ontario: Office of the Provincial Advocate for Children and Youth, 2012), 12

Young People Who Will Benefit

The Office of the Provincial Advocate for Children and Youth receives call every day from children and youth seeking assistance — seeking a voice. The Office has heard from young people who were facing situations reflected in the descriptions below:

- Abuse or neglect towards all children in a family that did not come to light until some of the children are over 16
- A parent's mental health problems became increasingly serious to the point that the parent could no longer provide appropriate care to the young person, 16 years of age
- Young people with developmental or communication disabilities that prevented them from either recognizing or disclosing abuse when he or she was under 16
- Young people who “stuck-it-out” at home until the age of 16 and thought they could cope on their own, either on welfare or the shelter system, but were not prepared for the realities of that decision
- Lesbian, gay, bi-sexual, transgender or queer youth who have been rejected by their families
- A young person who first experiences abuse/neglect after the age of 16
- A young person who was “kicked out of the house” at 16 but who is not ready to live on his or her own
- A young person whose parent(s) were incarcerated
- A young person whose parent died

Currently in Ontario, none of these vulnerable young people were entitled to child protection services for which they were seeking.

The law allows a young person to withdraw from parental control at sixteen.³ We fully support this. Some young people will choose to take this option and it must be available to them. We also know that moving out on one's own as a teen is difficult and it is not the norm in Canada. For example, sixty per cent of Canadians aged 20 – 24 were still living with their families in 2006.⁴

It is true not all of the young people who find themselves in these circumstances would want to come into care. It is also true, some of those who are in care can hardly wait until they reach 16 so they can appeal to a judge to terminate a crown or society wardship order and leave a system that they feel has not served them well. This is also well documented in ***My REAL Life Book***.

³ *Children's Law Reform Act*, R.S.O. 1990, CHAPTER C.12, s.65. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c12_e.htm

⁴ Canada, Statistics Canada, *The Daily:2006 Census: Families, Marital Status, Households and Dwelling Characteristics* (Ottawa: 2007)

Overview of Bill 88

The proposed amendments provide an opportunity for young people over the age of sixteen to receive residential care from a Children's Aid Society on a voluntary basis, in increments of six months, for up to twenty four months under a Temporary Care Agreement.

A Temporary Care Agreement is a mechanism that allows a children's aid society to provide "care and custody" to a young person by way of a contractual agreement. In the usual circumstances, the parties to the agreement are the parents, the society and the young person — if he or she is over 12 years of age or older. The proposed amendments appear to allow a young person to enter into a contract directly with a Children's Aid Society, without the consent of his or her parent, and dispenses with the requirement that the parent/caregiver confirm in writing that he or she is unable to provide adequate care for the young person. The amendments also remove requirements that a Temporary Care Agreement contain a statement from the parent/caregiver that he or she has discussed alternative placements with the society and the undertaking that the parent/caregiver or designate intends to continue to be involved in the young person's care.

Commentary on Bill 88

"Voluntariness"

The Office of the Provincial Advocate for Children and Youth supports the premise that protection services to those aged 16 and 17 should only be offered on a voluntary basis. No one should be forced to come into care against their will after their 16th birthday.

It should be made clear that the concept of "voluntariness" applies only to the young person seeking services and not to the Province or the individual children's aid society. As a signatory to the United Nations Convention of the Child, Canada has accepted the notion that a duty of care is owed to those under 18.⁵ ⁶There should be a presumption then, stated in either the law or regulations, that a young person seeking to place himself or herself into the care of a society is entitled to receive that care and cannot be turned down due to the financial constraints of the Society or the Province — a youth seeking service under this section must not be refused.

Permanency for those who want it

Many of the young people we spoke with expressed disappointment that the Temporary Care Agreements proposed through this amendment could only be extended in increments of six months (although up to an aggregate of twenty-four months). Some felt that young people over the age of 16 should have the option of developing a more permanent plan. The way that Temporary Care Agreements usually work is that any of the parties can cancel the agreement at any time as long as the mutually agreed upon period of notice is given. With this safeguard in place, it seems reasonable to suggest that young people over 16 be permitted to enter into temporary care agreements for any period of time up to an aggregate of twenty-four months.

⁵ U.N. General Assembly, *Resolution 44/25 [United Nations Convention on the Rights of the Child]*, Official Record, 20 November 1989. Article 3 <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶ U.N. General Assembly, *Resolution 44/25 [United Nations Convention on the Rights of the Child]*, Official Record, 20 November 1989. Article 4 <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Equal access to resources

Young people who come into care through this access point should be entitled to the same financial services and supports provided to children and youth who entered care in other ways. For example, the Continued Care and Support for Youth Program (“CCSY”) provides financial and other supports to young people who have previously been in the care of a children’s aid society, either as a crown ward or under a legal custody order; as the subject of a customary care agreement; or eligible to receive Renewed Youth Supports services. CCSY supports, which are available to young people between the ages of 18 to 21 years, should also be made available to young people who come into care under this section. Similarly, the newly announced tuition assistance provided by the government for crown wards and former crown wards should also be an accessible option for the young people who are the subject of these amendments.

Maintaining the option of social assistance for those who choose not to come into care

The Office of the Provincial Advocate for Children and Youth wants to ensure that young people who leave home but are not interested in coming into care are not barred from entering into social assistance programs such as Ontario Works. Some young people who reach the age of 16 are willing and interested in living independently and others are not. Opening up the option of coming into care should not reduce the total range of options for young people to transition into adulthood with the supports that are most suited to them. Safe guards should be put in place, through legislation if possible, to ensure that the Ontario Works does not make use of this change to the CFSA to exclude 16 and 17 year olds from receiving social assistance support.

Capacity of Children’s Aid Societies

Changing the age of protection is an important step. It will not in itself, however, bring the fundamental change that is needed to child welfare and therefore to the lives of children who rely on the state for support. Teenagers, particularly those who have lived through difficult times at home, have learned to cope and are often very resilient. If we want them to be successful, if we want them to make use of the support we are willing to offer, we must treat them with respect. We must listen to them and give them control of what they feel they need to succeed. We must be there for them unconditionally if they fall, and be willing to help them back to their feet, learn from their experience and begin anew. While there are individuals working within the child welfare system who have the skills to “parent” and work with young people this way, ***My REAL Life Book*** and the Hearings told us that the system is not adept at supporting this type of work. This is one of the fundamental aspects of life in care that has not yet changed. It is a huge task to change the culture of a system. The good news is that it costs little to undertake the work differently. The Office of the Provincial Advocate for Children and Youth believes that this work must begin immediately.

When the *Blueprint for Fundamental Change to Ontario’s Child Welfare System* was released one of the “quick win” announcements made by the Ministry of Children and Youth Services was the funding for “transitional workers” across the Province to assist youth in care to live on their own once they qualify for CCSY. This funding was provided not to the child welfare system directly but to community agencies with the expertise in the area to work with child welfare. The implementation of Bill 88 will be crucial to its success. As we have heard from youth, the Bill is

an institutional solution that is necessary, but the solutions that young people need most are human solutions — those are much more difficult to achieve.

Conclusion

The Office of the Provincial Advocate for Children and Youth supports Bill 88 with some modest additions. These include:

- Allow a young person to enter into an agreement with a children's aid society for periods of longer than six months
- Ensure that young people who enter care under this section are entitled to financial and other supports under the CCSY program (including tuition assistance)
- Ensure a youth seeking service under this section can not be refused by the province or children's aid society
- Ensure young people between 16 – 17 years of age who withdraw from parental control but are not interested in entering into the care of a children's aid society are not prohibited from applying for Ontario Works or other social assistance programs

The young people who held the Youth Leaving Care Hearings talk respectfully about “rocking Queen's Park”. At the very least, it is fair to say that the youth who participated left a lasting impression on the Legislature. The elected officials, their staff and the staff of the Legislature made space for these young people by welcoming them into the building, essentially “sharing their home” with the children in the care of the province. That was remarkable.

Also remarkable was that following the Hearings and the release of *My REAL Life Book*, a member of each party (Rod Jackson, Monique Taylor, and Soo Wong) individually introduced Private Member's Bills based on what they had heard and the research they had done on their own. This type of non-partisan dialogue and connection between all parties is unique and bodes well for the future. The commitment by the Legislature to children living in care could not have been more clearly spoken. For that, the Office of the Provincial Advocate for Children and Youth is grateful.

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