

# **A NEW MODEL FOR CHILD & YOUTH ADVOCACY IN ONTARIO**

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## EXECUTIVE SUMMARY

As a result of concerns raised within the children's services field in the past few years, the government of Ontario decided that an independent third party should be contracted to address a number of related issues about the functional and structural arrangements for the Office of Child and Family Service Advocacy (OCFSA), and to consider its relationship to other agencies engaging in child and youth advocacy. This review addressed a series of questions, the most important of which are the following:

- 1) What model or models of governance would be particularly suitable to enhance the independence of the Office?
- 2) What is the appropriate legislative mandate for the Office?
- 3) What are the resource implications of 1 and 2 above?
- 4) What are the appropriate arrangements for ensuring the accountability of the Office?
- 5) What types of performance indicators are appropriate to apply to the OCFSA?
- 6) What are the resources that are needed to implement a new model?

We surveyed literature and research reports on child advocacy and analyzed legislation and programs in other Canadian jurisdictions. We received information from the Office of Child and Family Service Advocacy on the function and operation of the Office, particularly over the past three years. In order to prepare this report, we consulted with many individuals and representatives of organizations, including the following:

- the Chief Advocate and other staff of the OCFSA;
- persons who, in a variety of professional capacities, have dealt with the OCFSA (e. g., members of IMPAC);

- senior civil servants from ministries that have had dealings with the OCFSA;
- persons who occupy roles in Ontario that have some similarities to that of Chief Advocate and who have dealt with the OCFSA (Children’s Lawyer, Ombudsman);
- Child Advocates in other Canadian jurisdictions;
- youth who have received service from the OCFSA;
- representatives of organizations of services providers, such as the Ontario Association of Children’s Aid Societies; and
- directors of agencies and institutions for children who fall within the purview of the OCFSA.

Our interviews and research revealed significant concerns about the perceived lack of independence of the Office, and the effect that this had on the credibility and effectiveness of the Office. There have been reports of harassment of Advocates as well as of interference with their work. The OCFSA has less independence and statutory recognition than any other child advocacy office in Canada.

Our recommendations are intended to increase the independence of the Office so as to foster more effective advocacy for the following categories of children: those who are in the care of government-mandated agencies in Ontario, and children with developmental disabilities or other special needs who are living at home. These children and youth are among the most vulnerable individuals in our society. They require effective advocacy to protect their rights, promote their interests, ensure the quality of services that they receive and help to prevent their abuse while in the care of the state. Effective child advocacy can also often serve to improve communication

and understanding between those who receive service (children and their families) and the agencies that serve them.

While recommending some significant changes for the future of child and youth advocacy, our proposals respect the mandate of other services and agencies in Ontario that are responsible for advocacy, and for the investigation of complaints about government services provided by government for children and youth.

The principal recommendations are the following:

- 1) To enhance the independence of the Child & Youth Advocate, the Advocate should be an Officer of the Legislature;
- 2) The mandate of the new Child & Youth Advocate should largely correspond to what the present OCFSA actually does: that is, be an advocate for children whose voice is potentially diminished as a result of their being in the care of the state;
- 3) The Child & Youth Advocate should provide a range of advocacy services for children. The Office should have responsibility for responding to complaints from children, parents and others about services provided to children in the care of the state as well as children with developmental and other special needs who live at home. The Advocate should make recommendations and engage in informal dispute resolution and advocacy for children and, in limited circumstances, conduct reviews of service, participate in Coroner's Inquests and provide policy advice to the Legislature;
- 4) The Child & Youth Advocate should not engage in formal advocacy in courts or before tribunals, or carry investigative or adjudicative functions.

These roles should be left to other agencies and bodies, though the Child & Youth Advocate may have an important role to play in terms of liaison and, on occasion, may request standing at certain reviews;

- 5) The Child & Youth Advocate should be held accountable through annual reports to the Legislature on the level and nature of services provided, as well as progress since the previous report and on areas of continuing concern;
- 6) Performance indicators for the Office can include many of the same items, with appropriate modification, that apply to the Ombudsman and the Children's Lawyer;
- 7) The present operation should be resourced at a higher level so that it can provide for enhanced functionality in the areas of research, policy, administrative structure (Deputy Advocate) and access to legal counsel. Approximate investment required: \$425,000-\$475,000.
- 8) In order to function as an independent Office of the Legislature and to implement fully the model that we have recommended will require an additional investment that should be less than \$400,000.
- 9) We further recommend that an operational review be conducted in order that the adequacy of the present level and mode of deployment of services and resources can be assessed. This should be done to support the preparation of the first budget, under the new model, and its presentation to the legislature.

Even with the size, diversity and complexity of Ontario, it should be possible to have an adequately resourced Child & Youth Advocate service at a level of investment that is modest within the context of what other provinces spend.<sup>1</sup>

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<sup>1</sup> See appendices E and F

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# **A NEW MODEL FOR CHILD & YOUTH ADVOCACY IN ONTARIO**

## **INTRODUCTION**

### **The Importance of Advocacy for Children & Youth**

Children and youth in the care of state agencies are a particularly vulnerable population. They are powerless and in need of protection. They are generally unable to advocate effectively on their own behalf, and their parents and relatives are often unable to advocate effectively for them. Canada has a tragic history of abuse, neglect and rights violations of children in state care in places such as juvenile detention facilities, residential schools, mental hospitals and foster homes.<sup>2</sup> Most provinces in Canada, and many other jurisdictions, have established advocacy offices for children and youth because of the vulnerability of young people. While these offices have differing mandates, roles and structures, a common core function is advocacy for children and youth in the care of the state. This advocacy is intended to protect the rights of children and youth in care, promote their interests, improve the quality of services that they receive, and help to prevent their abuse while in state care.

Ontario's appointment of the first provincial Child Advocate in 1978 was one of the first government-sponsored child advocacy offices in the world. Since then, most other Canadian provinces have established child advocacy programs for children in state care. The more recently established programs have greater independence and, in some important respects, have more "tools" at their disposal to serve children.

For much of the time since it was established, the Office functioned relatively free of political or administrative interference. That changed under the previous government. The perception developed among many professionals in the community, as well as youth

clients of the Office, that the Office of Child and Family Service Advocacy (OCFSA) was not fully supported by the government. In the past few years there have been significant concerns expressed about the lack of independence of the Ontario child and youth advocacy program. There were also disturbing reports of harassment and intimidation of OCFSA staff.

### **Concerns about Lack of Independence of the OCFSA**

It was beyond the mandate of this review to investigate the concerns about the lack of support and the interference and harassment of the Chief Advocate and staff of the OCFSA during the past few years. In the course of our interviews and research, however, it became clear that there have been significant problems with lack of support and interference with the previous level of independence of the OCFSA.

The period from 1995 to 2003 was marked by tension and problems in the children's services field in Ontario that included growing concerns about ill-treatment of some adolescents in the youth corrections system. An exploration of the nature and dimensions of these problems is clearly beyond our terms of reference. We do note, however, that, after many years in which no adolescents died in a youth residential setting, between 1995 and 2003 an average of one youth per year died in a youth residential setting in Ontario, from homicide by other youth, suicide or ill-treatment by staff. There was a riot and abuse at one youth corrections facility, and substantial problems at another facility that resulted in it being closed. There were a number of lawsuits launched by children and parents against the government.

The OCFSA was one of the principal agencies in advocating for children and

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<sup>2</sup> See Besner, R. (1998). *Institutional Child Abuse in Canada*. (Ottawa: Law Commission of Canada)

youth in state care during this difficult period. In some instances the Office was critical of the handling of specific cases or of policies for treatment of children in care. The Office became involved in a number of Coroner's Inquests into the death of youths in residential facilities. There were growing tensions between the Ministry of Community, Family and Children's Services, which was responsible for service system management, and the OCFSA, which was a part of that Ministry at the same time that it was an advocate for those with complaints and concerns about the care, services and policies of the Ministry. It has been reported to us that the Office was permitted, on one occasion, to hire legal counsel to have standing at an Inquest and was then told that it would never again receive funding for such a purpose.

The previous government tried to impose a contract on the Chief Advocate that would have, among other things, required the Chief Advocate to pre-clear with the Ministry any report or press release that the Office produced, and that would have required Ministry approval for any projects that the OCFSA intended to undertake.<sup>3</sup> The Office has never published an annual report. Permission to do so was sought in 1998, but permission was never granted.

One revealing example of the lack of support that amounted to interference concerns the preparation of posters. Posters are an important means of bringing to the attention of youth and parents that the Office exists and providing information about the way in which the Office can be contacted. Each residential facility in the youth justice system, child welfare system, child mental health system and provincial residential schools (e. g., schools for the deaf), is required to have the poster prominently displayed.

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<sup>3</sup> See e.g., M. Philp, "Child advocate sees threat to office: Ontario wants to place restrictions on independence and power, she says" *Globe and Mail*, June 26, 2003, A11.

On the poster is the 800 phone number that parents or youth can call to contact the Office. For a period of more than two years, requests to the Ministry of Community, Family and Children's Services to have more posters printed were ignored. The Office of the Advocate could not publish its own because the posters are supposed to carry the provincial logo, permission for which requires ministerial approval. New facilities and some existing facilities where the poster had gone missing or was destroyed went without the official poster because the OCFSA had none to provide.

Some mention also needs to be made about the work that the OCFSA performs, and the harassment and intimidation of its staff. By definition, Advocates are advancing the position of their child or youth client, rather than that of the agency providing the service. The Advocate acts on complaints against agencies and their staff. It is not surprising, therefore, that Advocates are sometimes perceived negatively by agencies and their staff, but this can never justify an agency or its staff acting in an unprofessional fashion with the OCFSA or undermining its work. Incidents, however, were reported to us where Advocates experienced a lack of co-operation in being allowed to see clients promptly, when they have experienced open hostility from staff, and when their cars (personal vehicles) have been damaged while visiting institutions. The Chief Advocate was subjected to stalking and threats to her physical safety. The acts of intimidation were committed by persons who were never identified. It should be emphasized that there is no suggestion that this harassment and intimidation was in any way connected to or condoned by Ministry personnel or government officials.

The Advocates now visit institutions and facilities in pairs, out of concern for their personal safety, including concerns about threats or abuse from staff. Advocates

now rent cars rather than use their personal vehicles and park them as far away from the facility as feasible.

Advocates give voice to perceived problems and they can be instrumental to their informal resolution. Advocates can, however, also be seen by staff and agencies as critics or adversaries. Advocates are not called into situations because all appears to be going well; they arrive because someone perceives that there is a problem. It is in the nature of the work of the Advocates that they may be perceived as the generators of more work or more bad press by agencies, staff or the government.

The value of the work of the Advocate can and should be seen from two different perspectives. First and foremost, the Advocate must give voice to children and attempt to achieve an acceptable resolution of the complaint. Second, the work of the Advocate should result, over time, not only in the improvement of care for individual children, but should also produce measurable systemic improvements in the care of children in Ontario. The Advocate's success in achieving these two objectives for children depends on the credibility of the Office with the agencies, institutions and ministries with which it works. The credibility of the Advocate with children, youth and parents depends in considerable measure on being perceived to be independent of the agency, institution or ministry that is perceived as part of the problem.

### **The Scope of this Review**

As a result of these concerns about a lack of perceived independence, and in fulfillment of a commitment made by the Liberals while in opposition, this independent

third party review was commissioned.<sup>4</sup> We were asked to study the functional and structural arrangements and to make recommendations as to how the independence and effectiveness of the Office could be enhanced so as to assist it to provide advocacy services for children and youth in the care of the state in Ontario. This review is intended to address a series of questions, the most important of which are the following:

- 1) What model or models of governance would be particularly suitable to enhance the independence of the OCFSA?
- 2) What is the appropriate legislative mandate for the OCFSA?
- 3) What are the resource implications of 1 and 2 above?
- 4) What are the appropriate arrangements for ensuring the accountability of the OCFSA?
- 5) What types of performance indicators are appropriate to apply to the OCFSA?
- 6) What are the resources that are needed to implement a new model?

This review is not an operational review, but rather a functional and structural review.

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<sup>4</sup> The last external review of the OCFSA was conducted in 1990 (ARA Consultants, 1990).

## METHODS

We collected information and ideas from a broad range of sources. We received a considerable amount of information from the OCFSA on its function and operation, particularly over the past three years. We conducted interviews with key informants in Ontario. We also reviewed the legislation in other Canadian provinces that have child advocates (every province except Prince Edward Island and New Brunswick) and interviewed almost all of the Child Advocates in Canada. We reviewed the legislation that governs various Legislative officers in Ontario who have responsibilities with some parallels to the OCFSA (Ombudsman, Provincial Auditor, Freedom of Information and Privacy Commissioner, and Human Rights Commissioner). We conducted a literature review about child advocacy, with a particular focus on Canada (see Appendix C for some international material).

The persons interviewed (see Appendix A) included the following:

- the Chief Advocate (three times);
- other staff of the Office of the Child and Family Services Advocate, the 10 Advocates (two times);
- persons who, in a variety of professional capacities, have dealt with the OCFSA (e.g., members of IMPAC – the Inter-ministerial Placement Advisory Committee);
- senior civil servants from ministries that have had dealings with the OCFSA;
- persons who occupy roles in Ontario that have some similarities to that of Chief Advocate and who have dealt with the OCFSA (Children’s Lawyer, Ombudsman);
- Child Advocates in other jurisdictions<sup>5</sup>;
- young people who have received service from the OCFSA; and

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<sup>5</sup> The interview schedule appears in Appendix B.

- Superintendents of institutions for children who fall within the purview of the OCFSA.

Most of these interviews were conducted in person, but some were done by phone, most notably those with Child Advocates in other jurisdictions.

In many cases, ideas generated from early interviews were tested on respondents in later interviews. Some persons were interviewed and/or spoken with less formally more than once.

Before the final interviews were conducted, we had ceased to uncover new perspectives that would be relevant to the functional nature of this review. As a result, we are quite confident that further interviews and consultations would not have produced significant new information.

In considering the information that we collected from various sources, the following should be kept in mind. First, we assured persons being interviewed that in our report there would be no attribution of comments to particular individuals. Some persons made it clear that they did not mind if attribution took place, though in the course of some of the interviews with these persons they specifically asked that one or more of their comments not be repeated and kept as background information and “off the record.” In the sections that follow we have endeavoured to maintain the principle of no attribution.

Second, interviews and other means of gathering information were not used for the purpose of tabulating which views were subscribed to most frequently. Rather, we were interested in being exposed to as wide a range of views as possible in order that we could obtain as many perspectives as possible.

## RESULTS OF INTERVIEWS & RESEARCH - ONTARIO

### Legislative Mandate

There is consensus among the interviewees that the legislative mandate for the OCFSA in the *Child and Family Services Act* is vague and does not accurately capture the present role of the OCFSA. The *C.F.S.A.* provides that

s.102 . The Office of Child and Family Service Advocacy is . . . to

- (a) co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek approved services or services purchased by approved agencies;
- (b) advise the Minister on matters and issues concerning the interests of those children and families; and
- (c) perform any similar functions given to it by this Act or the regulations or another Act or the regulations made under another Act.

There is also agreement that the legislative mandate should be clearly stated, so that OCSFA's mandate, role, powers, independence and accountability can be understood by reading the legislation.

There is consensus that the present operating mandate of the OCFSA is appropriate, but that it should be reflected in a legislative mandate rather than in the patch-work quilt of inter-ministerial agreements and unpublicized policies. It is revealing that at present there is no public document that clearly sets out the mandate of the OCFSA, but we would summarize it as follows:

*The purpose of the OCFSA is to provide advocacy services for children and the parents/guardians of children who are in the care of the state, in the youth justice system, the children's mental health system, the child welfare system and Provincial and Demonstration Schools as well as children with developmental disabilities or other special needs who are living at home. The role of the Advocate is to hear the concerns of*

*these children and give voice to these children who, because their circumstances of age, and being in the care of the state and often without full familial support, have a reduced capacity to be heard on their own. In brief, the heart of the work of the OCFSA is to listen and to give voice. As part of giving voice, the OCFSA negotiates on behalf of the child or parent to improve the institutional circumstances that gave rise to the concern or complaint.*

### **Present Operations of the OCFSA**

The way in which the OCFSA operates is not documented in a clear and publicly accessible manner, though there are various internal documents that establish how the Office functions. The terminology in this section is that used by the Advocates. Advocates receive inquiries, concerns and complaints, predominantly from children and youth, but also from parents, guardians and others who are involved with children, including agency staff and personnel from the ministries under whose auspices services to children are delivered.

**Case work.** Advocates listen to the concerns of children and look for ways to give voice to them. This phase of their work is called their “case work.” The conduct of case work frequently involves speaking with children other than the original complainant at the same facility as the original complainant; it may also involve speaking with the staff of the facility or agency and having discussions with administrators. These discussions are for the purpose of advocating on behalf of children, so that their voices may be heard and their concerns addressed.

**Reviews.** In the course of doing case work, interviews with other children may

suggest that the initial concern could be part of a broader pattern at an institution. The OCFSA, after considering this information, may decide to conduct a “review.” Reviews involve conducting interviews with all young people at a facility, in order to determine whether the conditions that appeared to prevail, based on the case work interviews, are widespread and serious. Reviews may also involve interviews with program staff and/or administrative staff at the institution. Reviews result in written reports that receive limited distribution through a variety of informal channels, but without the provincial logo or ministerial recognition.

The OCFSA uses the term “review” and not “investigation,” because it makes an important distinction between the two. This distinction is now widely accepted by the key informants whom we interviewed. Reviews are conducted within the spirit of advocacy, that is with one or more children in mind and, as much as possible, from their perspective. The Advocate is not impartial and cannot be expected to be impartial because the job of the Advocate is to advocate on behalf of her/his client. In contrast, an “investigation” requires a level of impartiality that cannot be expected of an Advocate. In a later section, we will address the standards to which reports of Advocates may be held.

***Policy work.*** The results of a review may lead the OCFSA to the conclusion that a problem exists that goes beyond a small number of seemingly isolated cases and that may need to be addressed through systemic change; at this point the OCFSA sees itself as involved in its “policy work.” The OCFSA may come to the conclusion that reviews should be conducted at similar facilities and institutions. When systemic problems are identified, the OCFSA will undertake a broader study and write a report to advocate for changes in systems and/or policies, keeping in mind that they do so as the voice for

children who cannot adequately advocate on their own behalf.

Advocates do not consider it to be their function to get involved in policy areas where that involvement does not first start at the level of case work, followed by one or more reviews. Interviews with senior civil servants and others who have province-wide responsibilities also recognize that at present the policy role of the OCFSA is limited to responding to issues that arise out of case work (i.e., individual complaints) and they consider this to be appropriate.

### **Improving Child and Youth Advocacy in Ontario**

A major area of discussion with the interviewees was their views about the most appropriate model for child and youth advocacy in Ontario. This included discussion with them about what should be the level of independence as well as the role and the powers of the Office. It was widely recognized that any new arrangements for the Office should not duplicate functions already carried out by other institutions and agencies in Ontario.

***Independence.*** There is a high level of agreement that there is an important place in the array of services and institutional arrangements in Ontario for a child advocacy Office that would have a legislative mandate that is very similar to what the Office now actually does. There is also agreement that the Office should not be within a service ministry and certainly not in a ministry that has responsibility for the services that the clients of the Office are receiving. The interviewees almost all agreed that the present lack of independence of the OCFSA at least creates a “perception problem,” that can undermine the credibility and trust of the Office with client groups. Many interviewees were concerned that recent history suggests that the lack of independence may actually

undermine the effectiveness of the Office.

The Office could be placed in a “non-service” ministry, such as the Ministry of the Attorney General, but many interviewees argued that the optics of this might not be desirable. The credibility of the child advocates would, from the point of view of its clients (children and parents), clearly be most enhanced if the Office is perceived to be outside the system that children and parents see as the problem. Further, the *informal* advocacy and problem solving role of child advocates may not fit well within the more legalistic framework of the Ministry of the Attorney General. The institutional arrangement that best fits is to make the Chief Advocate an Officer of the Legislature. On this point there is now considerable agreement.

***Advocacy Not Investigations.*** There is also a high level of agreement that the powers of the Office, particularly in terms of investigative responsibilities and powers, should not be substantially enlarged. Investigations, inquiries, and quasi-judicial proceedings should be left to other bodies and agencies such as the police, Children’s Aid Societies, Ministry investigators and the Ombudsman. While it is generally accepted by interviewees that some additional powers and responsibilities should be given to a new child advocacy Office, these should be largely administrative, and not investigative.

It was suggested by a few interviewees that additional powers, particularly investigatory ones, would assist the OCFSA to do its work. We note that those who expressed that position do not want the type of work now done by the OCFSA to be significantly changed, and neither do they want a change in the general manner in which child advocacy services are provided.

## **CHILD ADVOCACY ELSEWHERE**

### **In Canada**

In 1978, Ontario was one of the first jurisdictions in the world to establish a child advocacy program for children in state care. Since then, child advocacy offices have been established in many countries, and every province in Canada except Prince Edward Island and New Brunswick now has a child advocacy program. A number of Canadian programs have been reviewed and have undergone major changes in the past few years (Alberta, British Columbia and Newfoundland and Labrador). As new child advocacy programs are established and old programs are reviewed, there may be valuable opportunities to learn from other jurisdictions.

The Ontario model was a world leader in 1978, but it is now time to address the problems evident here and learn from experience in other jurisdictions.

### **Consultation with Child Advocates in Other Parts of Canada**

In completing this section of the review, we consulted, by telephone, with almost all of the Child Advocates in other provinces (see Appendix A for names and Appendix D for the interview protocol).

### **Independence of the office**

There has been a clear trend in Canada to ensure that child advocacy offices are and are seen to be independent of the service providers with which they deal. As a result of relatively recent changes in some provinces, only in Ontario is the child advocacy office a part of a Ministry responsible for providing services. In most provinces, the Child

Advocate (or a similarly titled person) is an Officer of the Legislature, and reports to the Legislative Assembly.

The majority of provinces have an independent Child Advocacy Office. In Quebec, child advocacy is a part of the human rights commission, while in Nova Scotia the Children's Advocate operates within the Ombudsman's Office.

### **Nature of advocacy, mediation and investigations**

While there is agreement across provinces about the need for child advocacy offices to be clearly seen as a voice for children, there are differences in the nature of the advocacy that is undertaken. Provincial child advocacy offices are split between those that respond only upon receiving a referral or complaint from a parent or child, and those that may initiate investigations themselves.

Some offices speak of "mediation" as part of their services. Most offices, however, do not consider mediation to be consistent with their mission as child advocates, because to be a mediator requires impartiality that is inconsistent with the strength of the voice that is provided on behalf of children. Saskatchewan, for example, contends that it makes extensive use of mediation as a form of child advocacy; 85% of cases are resolved through mediation without an investigation. Even in provinces that do not formally recognize mediation as being within the mandate of the child advocacy office, most complaints are resolved through informal dispute resolution. The apparent contradiction may be that the word "mediation" is used synonymously with "negotiation" and "informal dispute resolution" and may well involve a process where the Advocate is

involved in representing the child rather than acting as an impartial third party who attempts to move the contending parties to common ground.

In some provinces, the child advocacy Office is responsible for carrying out investigations of institutional abuse or neglect. In these provinces, the Office has investigatory powers, such as the right to issue a subpoena and to take a sworn statement. This model of combining child advocacy and investigative functions is most pronounced in Nova Scotia and Saskatchewan, which are smaller in size than Ontario and where collateral investigative authority is not vested within another agency. In larger provinces, which have agencies dedicated to investigations of institutional abuse, child advocacy offices do not undertake this investigative function.

### **Informing children and parents of their rights**

Parents and children are made aware of their rights and of the existence of child advocacy programs through posters that are to be in clear view within the agencies, facilities and institutions that provide services to children and youth who are in care. These posters list a toll free phone number to facilitate contact.

It would appear that there are more resources available in other provinces to help inform parents and children of their rights, and to facilitate contact with child advocacy programs. In every province that has a child advocacy service, except Ontario, brochures and informational materials about rights and child advocacy programs given to every child and parent, if a child comes into care. Similarly, in almost every province, except Ontario, there is a dedicated child advocacy web-site to provide information about rights and about the child advocacy Office.

## **Research**

All provincial child advocacy offices see research as being a fundamental part of child advocacy. Only Saskatchewan has in-house research capacity. Most offices contract out research to other organizations; this is driven more by the economics of the office than by the desirability of having at least some research capacity within the organization.

## **Future developments**

Provincial Child Advocates identified a number of areas for important future developments in child advocacy:

- 1) There should be a greater emphasis on systemic advocacy, though individual case advocacy must always remain the core function;
- 2) Preparing "report cards" for child well-being in the province would be desirable;
- 3) Advocacy for marginalized groups such as Aboriginal persons should be enhanced;
- 4) Advocacy services should be made available across all services and ministries that provide services to children. In most provinces (as in Ontario), child advocacy programs focus on services for children in state care (child welfare, children's mental health, disabled children in residential care and young offenders). In some provinces, notably Saskatchewan, the statutory mandate appears much broader, allowing complaints to be made to the Children's Advocate about any government services provided for children. In practice, even in provinces like Saskatchewan, child advocacy programs focus on children in state care. Many child advocates in Canada believe that child advocacy programs should be available for concerns in regard to all government services provided for children, in particular extending child advocacy into the education field.

## **Conclusions: Learning from Other Provinces**

A review of child advocacy programs in Canada reveals that the Ontario program has the lowest budget per capita, less independence and fewer powers than any other.<sup>6</sup> In every other province that has a child advocacy program, legislation provides a clearer mandate, greater independence and more effective powers.

Interestingly, our interviews with Child Advocates in other provinces reveal that even when their statutory mandate appears to be broader than that in Ontario, and even when they have broader powers than are provided for in Ontario, child advocates see their role in the same way that child advocates in Ontario *view* their role. The primary role is understood to be to act as advocates for children and as problem solvers, not as investigators or adjudicators of rights.

Generally, the strength of child advocacy offices in Canada is predicated on their focusing on issues related to children. Outside of Ontario, most, but not all, child advocacy offices are outside of service ministries, and are structured in such a way as to assure some measure of independence, at least administratively. In most provinces, independence is provided by having the Child Advocate appointed by and accountable to the provincial legislature. Direct reporting to the legislature is seen to help assure relative independence from political interference, and reporting directly to the legislature enhances the visibility and credibility of the Office.

All child advocates acknowledge their work is politically sensitive. Their objective is to improve the care and services provided children and not to serve as an “internal opposition” or to embarrass the government. Most of their work is “low

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<sup>6</sup> See Geigen-Miller, 2003, p. 20-21; and data provided by Canadian Council of Provincial Child & Youth Advocates, May 2004.

visibility” and the power to make their concerns public should be used sparingly. Nonetheless, the public has a right to know how children are being cared for by the government and its agents, and ultimately it is the responsibility of child advocates to bring to light concerns about the care that the state provides to children.

While there can be no absolute guarantees to ensure the independence of child advocacy programs from political interference, there are ways to provide enhanced levels of independence rather than reduced ones. This can be achieved by having the child advocacy office legislatively defined, and having it report directly to the provincial legislature.

The primary function of all child advocacy offices is to be a voice for children, either with respect to systemic concerns, or individual concerns. All advocates see their primary role as providing support for children by enhancing the voices of children. Vocabulary, modes of operation and statutory powers differ from province to province. These provincial differences and similarities are instructive as we look for a model that is suitable for the circumstances that prevail in Ontario. We note that a particularly significant feature of the Ontario situation is that child advocacy operates within a complex and well developed system of services for children and youth.

### **Other Countries**

We also obtained literature about child advocacy programs in other countries (see Appendix C), but we did not conduct interviews outside of Canada. Our focus on Canada was partially due to constraints of time, but it became apparent early that the constitutional and institutional framework in other countries is quite different, making

experiences outside Canada of limited utility for making recommendations for reform in Ontario.

## **ANALYSIS AND RECOMMENDATIONS**

Our analysis of the information that we received were filtered through three prisms:

- 1) While we did not attempt to count the number of times that particular opinions were expressed, we were cognizant of matters about which there was a degree of consensus, as well as issues about which there was overwhelming agreement;
- 2) We have made recommendations that are consistent with the unique structural features and institutions of Ontario; and
- 3) We undertook this review with eyes that were not focused on recent history, though we certainly took that history into consideration as we looked to the future of the Office.

### **THE FUNDAMENTAL RECOMMENDATION**

Our fundamental recommendation is that there should be a new legislative Office, the Child & Youth Advocate (CYA), with a statutory mandate, powers and responsibilities that will help to ensure its independence, effectiveness and accountability. There should be a clarification of the role and an expansion of some of the present powers and responsibilities, but the mandate proposed remains much as it is at present, focusing on the advocacy for children and youth for whom the state is exercising some or all parental responsibilities, as these children are in the legal care of the state. The Child & Youth Advocate should provide a spectrum of advocacy services outside the courts, with the primary mandate of giving voice to the concerns of children. The responsibilities should include the possibility of carrying out service reviews and giving policy advice to government, but the Advocate will continue to leave formal investigations and adjudication of rights to other institutions and agencies.

## **NAME OF THE OFFICE: CHILD & YOUTH ADVOCATE**

It is recommended that there should be a new name that is less cumbersome than the present one, but that still reflects the mandate the Office. The Office is not limited to advocacy under the *Child and Family Services Act*. From the perspective of some legislation and international documents, such as the *United Nations Convention on the Rights of the Child*, the term “child” includes anyone under the age of 18. We recommend, however, that the Office should be referred to as the Child & Youth Advocate. The inclusion of the term “Youth” is consistent with popular usage and the understanding of major client groups (most adolescents do not consider themselves “children.”) Further, the mandate of the Office should include those who are legally young adults, but legally defined as needing continuing service, such as those “young offenders” who are over 18, but in youth custody because they committed offences while under 18 as well as young people who remain eligible for child welfare services past the age of 18 and up to the age of 21.

## **MANDATE OF THE OFFICE**

A number of countries (e.g., Sweden) have a Children’s Ombudsman with a broad mandate that extends to monitoring and advocacy in regard to all services provided by government to children. In Saskatchewan, the legislation confers a similarly broad mandate on the Children’s Advocate, covering “a child who receives services from any department or agency of the government,” though in practice the major focus of the Saskatchewan office is on children in the care of the state. The dominant “Canadian model” of offices of child advocacy is focused on the most vulnerable children, those

who are in the care of the state or receiving special needs services in their homes. These are children whose parents or relatives - their natural advocates - may, for a variety of reasons, have difficulty in providing effective advocacy and hence have the greatest need for professional advocacy.

At present, we do not consider it desirable to expand the mandate of this office. There are advantages to having an Office that focuses exclusively on the relatively small group of children who are most vulnerable, leaving other agencies to provide advocacy for children under the care of their parents. If the Office were to have a broader mandate, there would still be a need to pay special attention to the concerns of the most vulnerable children and to ensure that their needs did not become a peripheral concern. There may, however, be a need for further study of the adequacy of advocacy services for children living with their parents when concerns are raised about government provided services, for example in the education system.

The mandate of the present OCFSA is not clear in the legislation, and there is understandably some confusion among children, parents and members of the public and professionals about the mandate of the Office. Legislation should clarify the range of services for which the Office is responsible, focusing on children in the care of the state.

The Child & Youth Advocate should be mandated to provide advocacy services for children, youth and families seeking or receiving the following types of government services or care:

- Residential services provided under the *Child and Family Services Act*, which includes foster care;
- Residential services provided to young offenders by the Ministry of Children and Youth Services;

- Mental health residential services provided for children and youth provided under the *Mental Health Act*;
- Provincial and Demonstration Schools operated by the Ministry of Education;
- Residential and non residential services for children with developmental or special needs and their families; and
- Young persons in police or court holding cells and young persons being transported by police or court personnel.

## **THE MANDATE OF THE CHILD & YOUTH ADVOCATE**

The principal mission of the Child & Youth Advocate should be to help give a voice to children for whom the Government of Ontario or its agents have a primary responsibility for providing care. These are children and youth whose voices often need the “amplification” that can be provided by the Child & Youth Advocate.

The provision of advocacy support is intended to give effect to the child’s “right to be heard,” a fundamental right that is recognized in the *United Nations Convention on the Rights of the Child*. Allowing the child’s voice to be heard is an important part of ensuring that children receive the services that they need and to which they are entitled. Ensuring that the child’s views and perspectives are considered increases the likelihood that decision-makers will promote the best interests of children. Giving full voice to the complaints of children should also help to reduce the incidence of abuse and neglect of children in the care of the state.

### **The nature of child & youth advocacy**

The Child & Youth Advocate should have an informal advocacy role, leaving formal advocacy before courts and tribunals to other advocates, such as the Office of the

Children's Lawyer. An important role for the Child & Youth Advocate should be to provide liaison between children and other advocates, especially, in appropriate cases, with legal counsel.

The Advocate should provide a continuum of advocacy services. Its boundaries should allow the Office to complement and be complemented by the other institutions, agencies and services available in the Province of Ontario. There are other institutions and agencies that have legal advocacy, investigative and adjudicative functions; the Child & Youth Advocate should not duplicate their work.

The OCFSA now takes the position that, irrespective of who makes the contact or the complaint, the "client" is always the child. This should continue to be the policy and practice. The role of the Advocate involves taking positions based on the views of the child. In the case of children who, because of age or developmental delay, lack the capacity to express views, the Advocate may become involved as a result of being contacted by parents or others. In these cases, the Advocate should take a position that advances the interests of the child.

A difficult issue in the field of children's advocacy is whether to advocate a position that a child wants even if the Advocate believes that this is contrary to the interests of the child (or even potentially harmful to the child), or if the Advocate is concerned that the child is being manipulated or improperly influenced by others to take a certain position. Some advocates for children, such as the Children's Lawyer in Ontario, will sometimes advocate for positions that are *not* consistent with the views of the child who is being represented. In our view, the present policy of the OCFSA should be continued: the expressed views of a child should guide the Child & Youth Advocate.

Unless the child lacks the capacity or willingness to express his or her views, the Advocate should be advancing the position articulated by the child, and not, for example, be taking a position based on the parents' views about a child's best interests. Nor, if the child has capacity to express views, should the Advocate be taking a position based on the Advocate's personal opinion about the child's needs or best interests.

The children whom the Advocate assists are vulnerable; many have been abused and they often mistrust adults. If the Child & Youth Advocate were to take positions that are inconsistent with the views of their clients, children and youth would not trust them, and as word would spread among institutionalized children, children would be more reluctant to contact the Advocate. The Advocate should be guided by the instructions provided by a child, as there may be no one else who will give full voice to the views of the child. There are others who are expected to promote the interests of the child and address institutional considerations.

If the Advocate believes that the position of the child is unreasonable, harmful or a result of manipulation by the others, the Advocate should, in a sensitive fashion, discuss this with the child. We cannot emphasize too strongly that in the model that we are recommending that the Advocate's primary role is to advance the claims of the child. In all likelihood, if the Advocate has concerns about the child's position, the service providers and decision-makers dealing with the child will have similar concerns, and the Advocate may inform the child that these are the concerns of others, without expressing any personal views. In some cases, the Advocate may conclude that the child is making frivolous or vexatious claims, for example by repeatedly making accusations of ill-treatment that are clearly unfounded; the Advocate should have discretion to decline to

assist a child or youth. The exercise of that discretion should not, however, involve labeling the child as being frivolous or vexatious.

An aspect of being guided by the child's instructions is that the Advocate must respect any restrictions that a child places on the use of information. The Advocate should respect any confidences of the child, and only disclose information with the permission of the child except when there are legally reportable concerns of child abuse or neglect under the *Child and Family Services Act* s.72. The Advocate should normally encourage a child to share information with service providers or parents if this will promote the welfare of the child, but ultimately the Advocate should respect the privacy and confidentiality of children. It needs to be understood that this will, at times, result in a delay in the Advocate bringing forward certain complaints or information, or having to raise the concern at other than the level closest to the occurrence.

While some limited fact-finding is an aspect of advocacy, the Advocate's role is clearly not investigative or adjudicative. The Advocate's role is neither to determine the validity of a complaint made by a child, nor to determine legal rights and responsibilities. Determining the validity of complaints or legal responsibilities requires a level of impartiality that is inconsistent with the role of the advocate who is, by definition, partial to the client.<sup>7</sup> At present, the adjudicative functions in regard to children in state care are already performed by a number of tribunals and the courts, so it would be duplicative to establish a new tribunal that would conduct hearings. Without a full and fair hearing, the

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<sup>7</sup>The Ontario Human Rights Commission has advocacy, investigative, mediation and adjudicative functions. The Commission receives complaints, investigates and may also adjudicate about alleged violations of human rights. To carry out these different functions, the Commission has a separate and an independent Tribunal within the Commission. A major limitation with that model in the context of Children's Advocacy is the inevitably slow pace of case resolution that fair adjudication involves, which may be especially problematic for cases involving children.

Advocate is not in a position to sanction any individual or agency for alleged violations of the rights of a child.

In many cases, the response of the Advocate to a complaint will be to support a child (or parent) in pursuing the internal complaints process that service providers in Ontario are obliged to have. The Advocate, when trying to negotiate on behalf of a child, should take account of the relative power positions of the parties, i.e., to ensure a balance between the child/parent and institution/staff. When this process works, the parties may come to an agreement about the resolution of a complaint. The Advocate may also play a role in the implementation of any agreement made, but the Advocate should have no legal power to require the implementation of the agreement.

The Child & Youth Advocate must work with agencies, professionals and bureaucrats in the field of children's services. The work of the Advocate may involve negotiation and some degree of collaboration with providers of services in the search for informal resolution of problems. Often, the involvement of the Advocate should serve to improve communication and understanding between children or parents and the institutions that are intended to serve them. It is inevitable, however, that there will be cases in which there is tension between the Advocate and service providers or government officials. The Advocate may be seeking changes in services or accommodation from service providers who may, for a variety of reasons, believe that they should not respond in the way that the Advocate proposes.

In the discharge of its advocacy functions, the Office should generally seek to resolve disputes and concerns at the lowest level possible and as close to the presenting problem as possible. The Advocate will have responsibility to receive and review

complaints from children, parents and others, about service provision, violation of rights, abuse in institutions and other issues. In responding to these complaints, the Advocate may make inquiries with various persons in order to gain an understanding of the complaint, but formal investigations, when they are required, should be carried out by others who have investigative powers and resources, and in some cases, adjudicative functions, for example, police, Ministry investigators, C.A.S. staff or the Ombudsman.

While neither possible nor desirable in every case, the result of the involvement of the Advocate will in many cases be to improve communication and understanding, and hence to strengthen relationships between children and services providers.

Legislation should make clear the following:

- 1) The fact that a child, parent or other person has contacted or complained to the Child & Youth Advocate does not affect their right to seek any other relief, such as in the courts; and
- 2) The Child & Youth Advocate is not responsible for advocacy in the courts or before tribunals.

## **Reviews**

The Advocate should not have the power to adjudicate legal rights, and should leave responsibility for investigations to the police, Ministry investigators or others. The Advocate should, however, have the authority to carry out reviews of facilities, services or practices either on the Advocate's own initiative or at the request of a Minister or an agency. A review might involve interviewing a number of children, staff and others, as well as examining relevant documents in the possession of the agency or government.

Unlike an investigation that might be carried out by police, which focuses on a possible past crime, a review is intended to facilitate future changes in policy or practices.

Further, a review by the Advocate is not intended to result in legal proceedings against any individual or agency, but rather may result in a recommendation for future changes in policy or practices, though as a consequence of a review it is possible that police or other investigators may be notified of the need to carry out an investigation.

If, during or after a review, the Advocate finds evidence of a breach of duty or of misconduct on the part of an officer or employee of a governmental organization or contract agency, the Advocate should refer the matter to the appropriate authority (including the police, the Children's Lawyer or Ministry investigators), for an investigation and possible adjudication. In this situation, the Advocate should delay the completion of the review until other investigations are completed so as not to interfere with the determination of legal rights and responsibilities. The Advocate should develop protocols for dealing with such instances.

Reports and recommendations arising out of complaints or reviews may be made to institutional administrators, government or the Legislature for further action, but the Child & Youth Advocate should have no power to implement or to order implementation.

### **The range of advocacy services**

The range of advocacy services that should be provided by the Child & Youth Advocate include the following:

- Educate the public with respect to the well-being of children;
- Educate children about rights and services;
- Educate parents about rights and services for children;
- Consult and liaise with advocacy groups that deal some of these same children, such as National Youth in Care and Pape Adolescent Resource Centre;
- Educate staff and agencies about rights of children and obligations of staff and

agencies;

- Advise children, parents and staff about rights issues, complaint procedures and appeal processes;
- Assist children and parents who are pursuing internal complaints and informal appeals;
- Receive and respond to complaints from children (or from parents or others) by engaging in non-legal advocacy on behalf of the child and supporting the child (or parents) to have their voice heard;
- Advocate on behalf of children with agencies and government - either presenting views of children and/or advocacy for the interests of children;
- Seek informal resolution of disputes/complaints;
- Use interventions, such as negotiation and informal dispute resolution, in attempts to find a solution that is satisfactory to the child/parent;
- Seek appropriate services for hard-to-serve children by working with a range of service providers and Ministries;
- Liaise with investigators (e. g., police, Ministry investigators);
- Liaise with other advocates (e. g., Children's Lawyer);
- Undertake research and systemic advocacy on the initiative of the Advocate;
- Conduct program/facility reviews at request of the Minister, an agency or on the initiative of the Advocate when grounded in work with individual clients;
- Advise the government or agencies about policy, programs and legislation for children; and
- Monitor the implementation of recommendations.

## **STRUCTURE: INDEPENDENT OFFICE VS. PART OF LARGER OFFICE**

In some provinces child advocacy is carried out as part of a larger office - in Quebec as a responsibility of the Human Rights Commission, and in Nova Scotia as a responsibility of the Ombudsman's Office, with a Deputy Ombudsman for Children. In British Columbia, child advocacy was originally a responsibility of the Ombudsman's Office, but it is now a separate office.

The functions of the Child Advocacy Office are quite different from either the Ombudsman or the Human Rights Commission. Child Advocacy requires special expertise and knowledge. There are special communications issues with children and youth, and there is much greater need for a prompt response. Informal advocacy, service brokerage and informal dispute resolution are more important in the work of the Child & Youth Advocate than in the work of the Ombudsman or the Human Rights Commission.

In light of its special role and functions, we recommend that the Child & Youth Advocate should be separate from the Ombudsman (and the Human Rights Commission). The Child & Youth Advocate should, however, liaise with the Ombudsman, and should ensure that there is an effective process for referring cases between offices, as already occurs. There may also be some opportunities for the Child & Youth Advocate to share some resources and infrastructure services or to have joint publicity brochures with the Ombudsman.

## **A NEW ACT: *THE CHILD & YOUTH ADVOCATE ACT***

The legislation governing the Office should be in a separate statute from the *C.F.S.A.*, since the Advocate will deal with children receiving services from more than one Ministry. Having a separate statute will accomplish the following: 1) clarify the mandate and powers of the Advocate; 2) safeguard the level of independence of the Advocate from possible ministerial interference, through regulation or other means; and 3) serve as a symbolic manifestation of the independence of this office. Having an office with ministerial independence will also reduce the possibility of the appearance of a conflict between the budgetary needs of the Advocate and those of the service providers with whom it deals.

### **Appointment**

To increase independence from political or bureaucratic pressures, the Child & Youth Advocate should be appointed as an Officer of the Legislature for a fixed term, removable only for cause. Five years (renewable once) is a typical term for such appointments in Ontario. Such a term makes it possible for an Advocate to be appointed by one government and serve into the term of the next government. While there should be the possibility of renewal of the Advocate for a second term, this should not be seen as a permanent position. In any high profile responsible position, there are advantages to having a new person assume the Office after a period of time. Thus, there should be the possibility of renewal for one term only (i. e., a maximum of 10 years).

The statutory terms of appointment should be specified in the proposed *Child & Youth Advocate Act* and they should include the following:

1. The Child & Youth Advocate shall be an officer of the Legislature, to exercise the powers and perform the duties prescribed by the *Act*, selected by a Legislative Committee with representation of all parties in the Legislature.
2. The Child & Youth Advocate shall hold office for a term of five years and may be reappointed for one further term of five years.
3. The Advocate shall be removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.
4. The Children's Advocate shall devote himself or herself exclusively to the duties of the Advocate's office and shall not engage in any other employment.
5. There shall be provision for the appointment of a Temporary Advocate by the Lieutenant Governor in Council for up to 6 months in the event that the Advocate is unable to perform his or her duties.
6. The Child & Youth Advocate shall be paid a salary to be fixed by the Lieutenant Governor in Council, and that shall not be reduced except on address of the Assembly.

This salary should be set having regard to the salaries of those in similar legislative officer positions in Ontario. It should be appreciated that the Office holder is likely to be someone who has previous experience in the children's services field, but may find it difficult to return to that sector in Ontario after having been the Advocate. It also seems likely that the Office holder will have some difficulty in finding a position working for the Government of Ontario at the conclusion of service as the Advocate.

The Advocate will have to develop and publicize written policies and procedures that are consistent with the legislation. While the case advocacy function of the Office should be seen to be independent and non-partisan, the government should be able to exercise

some control over how the Office operates by having the power to enact Regulations or guidelines under the *Act*.

## **Reporting**

In order to ensure accountability of the Office and to inform members of the Legislature and the public about the Office, the Child & Youth Advocate should be required to report annually to the Legislature about the activities of the Office, its finances, and about trends and issues that affect children and youth who are covered by the mandate of the Office. The Ministers of all ministries affected by the *Child and Youth Advocate Act* should receive copies of the annual report before it is made public. These annual reports should not only identify the scope and extent of services delivered by the CYA, but they should also report on changes that have occurred since previous reports were submitted as well comment on areas that are of continuing or emerging concern.

As a result of specific cases or reviews, the CYA may issue reports of a less formal nature (e. g., letters expressing concerns) to agencies, institutions or ministries. Because the formal reporting relationship is to the legislature, these less formal communications ought not to be made public unless and until they are made a part of a report to the Legislature.

The Advocate should also be authorized to submit reports other than annual reports to the Legislature as the Advocate considers appropriate, giving the Minister(s) responsible for the provision of the services in question prior notice.

By reporting to the Legislature, rather than to a single Minister, the Advocate will be more independent. Further, the Advocate will be better positioned to advocate for

systemic change and address broader issues of resource allocation.

Ordinarily, any reports submitted to the Legislature will be made public. As discussed below, the Advocate will also be providing reports that deal with individual children or facilities which may be submitted to Ministers, managers or agencies that are expected to remain confidential.

### **Performance measures**

The OCFSA already collects and tabulates information on its activities that could form a substantial basis for indicators of performance that could be reported on a regular basis. These measures focus on the features of the cases such as the following: type of case (e.g., complex, consultation, dispute resolution, advice); age of client; region in which case occurs; ministry program involved; source of referral; and type of issues involved. The utility of such information goes beyond the ability to describe the population that received service. It can also be used to track changes over time with respect to identifying shifts in need as well as equity of service delivery across regions, institutions and programs.

More detailed measures of performance, in an appropriately resourced environment, can and should go beyond measuring the units of service that are delivered and include measures of efficiency and effectiveness. Measures of efficiency could include the amount of time that elapses between the making of a complaint and an interview with an Advocate. Measures of effectiveness could involve monitoring whether there are improvements in the rate of successful dispute resolution and should involve documenting change, if any, that takes place after reviews and other interventions have

taken place. The ability to contract for evaluation (research) services as part of a research component may be one of the means of verifying the extent to which the office is effective as an agent of change.

Other services in Ontario are in the process of developing measures of performance. The new Child & Youth Advocate office could benefit from the experience of these other services in two ways: 1) identifying specific measures that might be applicable, and 2) identifying the means of tracking certain information that ensure its validity and reliability.

### **The office and employees**

There should be statutory authorization to hire employees, who will be members of the Ontario Public Service. The budget for the Office of the Children's Advocacy should be set by the Legislature, and the financial management of the Office should be subject to annual audit by the Provincial Auditor.

## **POWERS OF THE OFFICE**

### **Confidentiality**

The Office will deal with very sensitive cases involving vulnerable individuals, and the Advocate and all employees should be required to take an oath of confidentiality.

The Advocate should not make public any identifying information about a child, parent or complainant without their express consent, but may share such information with agencies and service providers.

### **Immunity from liability**

The decisions of the Advocate about how to handle a case are often complex, and may be based on limited information. Suggestions by the Advocate are not intended to be final decisions about how to deal with a child, but only recommendations or advocacy positions. As the actions of the Advocate are never expected to be judgements as to rights or obligations, the decisions and actions of the Advocate should not be subject to judicial review. There should be a statutory provision that the Advocate and all of his or her employees have no liability for any action taken (or not taken) on behalf of a child, as long as the Advocate is acting in good faith.<sup>8</sup>

### **Involvement**

The Advocate should be able to be involved in a case after being contacted by a child, a parent, a staff person, a Ministry employee or any other person. The Advocate should be able to deal with individual cases, and as a result of this case work may decide to become involved in more broad reviews.

### **Notice by the Child & Youth Advocate**

Most of the cases dealt with by the Advocate will be resolved informally by those providing services for the child. Some cases, however, will involve more serious matters that may have broader implications. The Advocate should be able, in his or her discretion, at any time during or after the handling of any case or review, to consult any Minister who is concerned in the matter of the investigation. Further, on the request of any Minister in relation to any case or review, or in any situation where a recommendation is

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<sup>8</sup>See *Ombudsman Act*, s. 24.

expected to be made to a Minister, the Advocate shall consult that Minister before reporting to the Legislature.

### **Complainant to be Informed**

The Advocate shall inform the complainant, in such manner and at such time the Advocate thinks proper, of the result of their work.

### **Right to Refuse to Act or to Cease to Act**

The time and resources of the Advocate will always be limited. It is important to ensure that resources are not wasted on frivolous or unreasonable complaints. There may also be children or youth or parents who make repeated complaints, without foundation. The Advocate must have the discretion to refuse to act or cease to act on a complaint, if the Advocate considers that the complaint is frivolous, unreasonable or made in bad faith.

The decision of the Advocate not to act should not be subject to review by the courts, though children and parents may still have access to the courts to seek direct redress for their concerns (e.g., through a civil or criminal action that gave rise to the complaint).

If the complaint was made in writing, the Advocate shall inform the complainant in writing of the decision to not provide services, and may state the reasons. The Advocate should be sensitive to the child or youth when informing the child or youth of the decision not to pursue a complaint.

## **Research and systemic reviews**

The mandate of the Advocate should include conducting independent research and systemic reviews. The Advocate will often be in a good position to identify recurring and systemic problems and bring them to the attention of service providers and government.

It needs to be noted, however, that the role of advocate and the limited powers of the Office mean that, of necessity, the expectations for reports of the Advocate should be less than for offices that have formal powers of investigation and an obligation to be impartial, like the Ombudsman or the police. The Legislature and the general public should not expect the same thorough and balanced reports from the Advocate that they might expect from a body like a Royal Commission, the Ombudsman or the courts.

## **Entry, access to documents and examination of witnesses**

The Advocate should have the power to enter any facilities or place (other than a family home) where services within the mandate of the Office are being provided. The Advocate should also have access to any documents in the possession of a service provider concerning the Advocate's client.

## **Government requested reviews**

The primary mission of the Advocate should be to respond to complaints and issues raised by children and parents. The Office, however, has a unique expertise and should be available to carry out reviews at the request of the government or agencies. At the request of any Minister or agency, the Advocate should be prepared to undertake reviews of the operations of facilities or programs that provide services to children within the mandate

of the Office.

The Advocate should also have the responsibility for providing advice, as requested, to any government department or to any agency, about issues that relate to the provision of services or care for children.

### **Standing at Coroner's Inquests or public inquiries**

The Advocate should have the right to seek standing in Coroner's Inquests and Public Inquiries that deal with children in state care, and should be able to retain independent counsel for that purpose.

### **Accessibility to the Child & Youth Advocate**

In the proposed *Act*, accessibility to the Child & Youth Advocate should be defined as it is now in s103 and s108 of the *CFSA* and should include the requirement now found in the licensing regulations concerning the display of the poster that has information on how to access the Advocate as well as the requirements to inform children and youth of their right to contact an Advocate. This information must be provided at both the time of admission and at the time of the 30 day plan of care.

### **Offences: ensuring co-operation and preventing retribution**

Legislation should require the co-operation of employees of the government and agencies that have contracts to provide services for children who fall within the mandate of the Child & Youth Advocate.<sup>9</sup> It should be made an offence for any person to interfere with an Advocate carrying out the lawful functions of the Office.

Further, legislation should make it an offence for any person to impose any

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<sup>9</sup> See *Ombudsman Act* s. 27; *Human Rights Code* s. 8.

penalty or sanction on any person who seeks to enforce their rights or who discloses information to the Advocate. This should include protection for the good faith reporting or disclosure of information, even if it subsequently proves that the information is false.<sup>10</sup>

## **FUNCTIONAL CONSIDERATIONS**

Our examination of the functionality of the present office leads us to conclude that, even if the new model that we are suggesting were not going to be implemented, there are certain enhancements to the present staff and resource complement that should be undertaken immediately. We recommend the following: 1) a research capacity, possibly a combination of in-house and purchase of service arrangements, that could serve to enhance the tracking of progress, or lack of it, that occurs after reports or recommendations have been released, as well as enhance the quality of reports of reviews; 2) a policy capacity, with at least one person who has had first hand experience in the policy division of one or more ministries; and 3) access to legal counsel, not necessarily in-house counsel, but the ability to retain such counsel on an as needed basis.

In addition, we note that current administrative structure is very “flat,” with the Chief Advocate having twelve direct reports out of a total of about fourteen full time equivalent staff. To be adequately resourced Office requires at least one Deputy Advocate to make possible a manageable and high functioning set of institutional arrangements.

The need for and value of these enhancements are independent of the new model that is proposed here, but their absence would be felt to an even greater extent in the new model. We recommend that steps be taken to implement them immediately. We estimate

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<sup>10</sup> See *Human Rights Code* s. 8; and *Child and Family Services Act*, s. 72.

the investment required to be in the range of \$425,000 to \$475,000 per year.

The new model will require some additional investments: as an independent Legislative Office, separate from a ministry, the Office will need to have its own administrative infrastructure that is well beyond the capacity of its currently small administrative staff, and it will need to have the capacity to pay rent, deal with some enhanced salaries and afford greater expenses for communications. We are not in a position to estimate these costs, but we do consider it highly unlikely that they would reach \$400,000.

## **OPERATIONAL CONSIDERATIONS**

We were not appointed to conduct an operational review that could form a basis for determining whether the present level of service that is delivered is appropriate. No such study has ever been done of the OCFSA. Such a study should be done in time for the Chief Advocate to prepare the first budget under the new model. In addition, there are at least two areas that should be examined with respect to size of staff and deployment of resources. One is the intake function and the way that it is now shared among all the Advocates, taking a total of ten days per week of their time and limiting each Advocate's flexibility to be in the field. The idea of a permanent or semi-permanent intake team should be examined.

The other area that we believe needs to be explored is the possibility of some regionalization of services. It is important to have sufficient staff working together in the Advocate's Office to have a "critical mass" that allows for covering the responsibilities of the Office and to allow for the support and sharing that is needed for effective advocacy.

Thus, while it would make the Advocate more accessible to have satellite offices in other parts of the province, and closer to children and youth to be served, it would not be wise to have a large number of small offices scattered around the province. It is, however, important to consider establishing a second office in the North that could focus, in some appreciable measure, on Aboriginal children in the care of the state.

It is a strongly held view of the present OCFSA staff that a satellite office should not be staffed by only one or two advocates as they may be “co-opted” and lose their effectiveness as advocates. We note that it is *their* view that such an office, if there were going to be one, should have a staff of four or five persons. Further exploration is needed.

#### **INVESTMENTS: THEIR CONTEXT AND MEANING**

We have identified some investments that deserve to be made immediately in Ontario Child & Youth Advocacy services (\$425,000-\$475,000), whether the new model is implemented or not. We speculate that implementation of the new model will not cost more than another \$400,000. We are open to the idea that an operational review may identify that some additional investment may be required to meet the needs of Ontario for the following reasons: 1) such a review has not been conducted; 2) in recent years the OFCSA has experienced some cutbacks; and 3) there is a tremendous diversity of population (ethnic and otherwise) and geography to be covered.

The recommendations we have made concerning immediate investments in staffing and services plus the requirements of the new model will require a substantial proportional increase in the budget for child advocacy services. The total budget for child advocacy services, however, will still be a tiny fraction of the budget for child and youth

services, and less, per capita, for advocacy than in other provinces. The present budget of the OCSFA is so small (\$1 million) that any serious increase will be large in percentage terms, even if the actual number of dollars invested is modest.

There is no easy basis for estimating the appropriate level of expenditure for Ontario without an operational review. We can, however, provide some context in which the present recommendations can be considered and that context involves what is being invested in other provinces. We offer this context with certain caveats, the most important of which is that provincial differences in mandate and enormous differences in size of population make direct comparisons inappropriate. Any single comparison is inadequate. At best, it allows us to appreciate where Ontario now falls in the range of investments being made and where it would fall under certain scenarios.

In our view, all comparisons need to be made carefully. It is one thing to note that Ontario invests less per capita than any other province that has advocacy services, but we would not find it reasonable to suggest that the Ontario investment should be four times that of a province that has only one quarter the population of Ontario. We have appended two sets of information. The first, Appendix E, provides some information on salaries and total budget for other advocacy offices. It also contains some information on staffing. The second, Appendix F, provides more detailed staffing levels for these operations.

These data reveal that, even if one appreciably discounts the size of Ontario's population, its child and youth advocacy services are now the least resourced of any jurisdiction. They would continue to occupy that position if our recommendations for immediate enhancements were accepted; the situation would not change if the investments required to move to the new model were included, and there would still be

room for additional investments, if they were warranted, without moving Ontario from the ranks of the lowest spenders.

In brief, it is our view that Ontario has an under-resourced Advocacy service that can be improved with the types of strategic investments that we have identified. The cost of an appropriate level of investment to serve the people of Ontario can still be modest in comparative terms.

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## **APPENDIX A**

### **List of Persons Consulted for this Report**

Jordan Alderman, National Youth in Care Network

Marvin Bernstein, Ontario Association of Children's Aid Societies

Clare Burns, Children's Lawyer, Ontario

Wicca Cloutier, Parent Resource Center

Diana Cooke, Advocate, OCFSA

Anselmo Desousa, Advocate, OCFSA

Cathy Dyer, Ontario Association of Children's Aid Societies

Rawle Elliott, Advocate, OCFSA

Jamie Emerson, Chair, IMPAC (letter)

Judy Finlay, Chief Advocate, OCFSA

Mike Fogelman, Advocate, OCFSA

Matthew Geigen-Miller

Kate Greco, Advocate, OCFSA

Suzanne Herbert, Deputy Minister of Education

Jessica Hill, Deputy Minister, Ministry of Children and Youth Services

Ruth Hislop, Advocate, OCFSA

Peter Hoag, Advocate, OCFSA

Les Horne, Defence for Children International

IMPAC, Members of

Julie Kerr, Advocate, OCFSA

Audley Khaidian, Break the Cycle/Canadian Training Institute

Cynthia Lees, Assistant Deputy Minister, Ministry of Children and Youth Services

Clare Lewis, Ombudsman, Ontario

Carrie Mallett, Youth Piece Member (Sudbury)

Meghan Lloyd

Mike McGuire, Superintendent, Brookside

Ronald McKelvey, Director of Provincial Schools

Janet Mirwaldt, Children's Advocate, Manitoba

Ian Masse, Child and Youth Officer, British Columbia

John Mould, Children's Advocate, Alberta

Darryl Nancekeville, Director of Youth Services, Anago Resources

Deborah Newman, Assistant Deputy Minister, Ministry of Children and Youth Services

Deb Oreskovich, Advocate, OCFSA

Deborah Parker-Loewen, Children's Advocate, Saskatchewan

Lucille Roch, Assistant Deputy Minister, Ministry of Children and Youth Services

Sheila Roxburgh, National Youth In Care Network

Sheena Scott, Legal Director, African Canadian Legal Clinic

Ashraf Shah, Executive Assistant, OCFSA

Micheal Sklazeski, Youth Violence Initiative (Thunder Bay)

Stephanie "From the Family to System" Project

Hari Viswanathan, Advocate, OCFSA

Audrey Wandolo, Youth Coordinator, OCFSA

Lloyd Wicks, Child and Youth Advocate, Newfoundland and Labrador

Tom Windebank, Provincial Coordinator, Ministry of Children and Youth

## APPENDIX B

### Canadian Legislation on Children's Advocates (2004)

#### British Columbia

#### *OFFICE FOR CHILDREN AND YOUTH ACT*

#### [SBC 2002] CHAPTER 50

*Assented to May 30, 2002*

#### Definitions

1 In this Act:

“**child**” means a person under 19 years of age;

“**child and youth officer**” means a person appointed under section 2;

“**child in care**” means a child who is in the custody, care or guardianship of a director or the director of adoption;

“**director**” means a director under the *Adoption Act* or the *Child, Family and Community Service Act*;

“**youth**” means a person who is 16 years of age or older but is under 19 years of age.

#### Appointment of child and youth officer

2 (1) The Lieutenant Governor in Council must appoint a child and youth officer for a term of up to 5 years.

(2) A person appointed under subsection (1) may be reappointed.

(3) The Attorney General, on behalf of the government, may make a contract containing mutually agreed terms and conditions with the child and youth officer.

(4) Despite subsections (1) and (2), the Attorney General may appoint an acting child and youth officer.

(5) Despite subsections (2) to (4), a person may not serve as the child and youth officer for more than 10 consecutive years.

#### Functions of child and youth officer

3 (1) The functions of the child and youth officer are to provide support to children, youth and their families in obtaining relevant services and to provide independent observations and advice to government about the state of services provided or funded by government to children and youth in British Columbia, including but not limited to the following:

(a) services provided under the *Adoption Act* and the *Child, Family and Community Service Act*;

(b) early childhood development and care services;

(c) mental health services for children and youth;

(d) addiction services for children and youth;

- (e) youth justice services;
- (f) services for youth and young adults during transition to adulthood.
- (2) For the purposes of subsection (1), the child and youth officer may do the following:
  - (a) provide information and advice to children, youth and their families about how to effectively access services that meet their needs;
  - (b) provide information and advice to children, youth and their families about how to become effective self advocates with respect to the rights of children and youth in care under the *Child, Family and Community Service Act*;
  - (c) in extraordinary circumstances, advocate on behalf of individual children and youth to ensure that their views are heard and considered;
  - (d) promote and coordinate in communities the establishment of advocacy services for children, youth and their families;
  - (e) monitor the delivery of services in relation to the requirements of the *Child, Family and Community Service Act* and in particular the requirements of sections 2 and 3 of that Act;
  - (f) monitor the delivery of services referred to in subsection (1) in relation to relevant service delivery standards;
  - (g) provide advice to government and communities about the effectiveness, responsiveness and relevance of services for children, youth and their families;
  - (h) comment publicly on matters affecting children and youth.

#### **Staff and consultants**

- 4 (1) Employees necessary to carry out the powers and duties of the office may be appointed under the *Public Service Act*.
- (2) The child and youth officer may retain consultants or other persons necessary to enable the child and youth officer to exercise the powers and perform the duties of the office.
- (3) *The Public Service Act* does not apply to persons retained under subsection (2).

#### **Power to delegate**

5 The child and youth officer, in writing, may delegate to any person appointed or retained any of the powers, duties or functions under this Act except the power to submit an annual report.

#### **Investigations**

- 6 (1) At the request of the Attorney General, the child and youth officer must undertake an investigation into any matter within the scope of this Act.
- (2) The child and youth officer must make a confidential report of the results of an investigation under subsection (1) to the Attorney General, who may determine whether the report should be made public.
- (3) For an investigation under subsection (1), the child and youth officer may at any reasonable time, enter any premises in which services referred to in section 3 (1) are provided to children or youths.

#### **Gathering evidence in investigations**

- 7 (1) For the purposes of an investigation, the child and youth officer has the same powers that the Supreme Court has for the trial of civil actions to do the following:
  - (a) to summon and enforce the attendance of witnesses;

- (b) to compel witnesses to give evidence on oath or in any other manner;
- (c) to compel witnesses to produce records and things.
- (2) When the child and youth officer exercises a power under subsection (1), a person who fails or refuses to do any of the following is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or judgment of the Supreme Court:
  - (a) to attend;
  - (b) to take an oath;
  - (c) to answer questions;
  - (d) to produce the records or things in the person's custody or possession.

### **Annual and special reports**

- 8** (1) The child and youth officer must report annually on the work of the office to the Attorney General.
- (2) The Attorney General must lay each annual report before the Legislative Assembly as soon as practicable.
- (3) The child and youth officer may make a special report to the Attorney General about systemic issues affecting children and youth in British Columbia.
- (4) The child and youth officer may make public a special report under subsection (3) 60 days after it is submitted to the Attorney General or earlier with the agreement of the Attorney General.

### **Communication by child or youth**

**9** If a child or youth in care in a foster home, group home, facility or other place asks to communicate with the child and youth officer, the person in charge of that place must provide, as soon as practicable, an opportunity for the child or youth to contact the child and youth officer in confidence.

### **Protection for persons who provide information**

**10** A person must not discharge, suspend, expel, intimidate, coerce, evict or impose any financial or other penalty on, or otherwise discriminate against, a person, including a child or youth, because the person gives information to or otherwise assists the child and youth officer in a matter under this Act.

### **Child and youth officer's access to information**

- 11** (1) The child and youth officer has the right to any information that
  - (a) is in the custody or control of a director or of a public body as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*, and
  - (b) is necessary to enable the child and youth officer to perform duties or exercise powers or functions under this Act.
- (2) A director or a public body that has custody or control of information to which the child and youth officer is entitled under subsection (1) must disclose that information to the child and youth officer.
- (3) This section applies despite any other enactment or any claim of privilege, except a claim based on a solicitor client relationship.

## **Confidentiality and application of the *Freedom of Information and Protection of Privacy Act***

**12** (1) Despite the *Freedom of Information and Protection of Privacy Act*, the child and youth officer must not disclose information that could reasonably be expected to reveal the identity of a person who has made a report under section 14 of the *Child, Family and Community Service Act* unless that person consents to the disclosure.

(2) Despite section 11 of the *Freedom of Information and Protection of Privacy Act*, if the child and youth officer has custody of a record described in subsection (1) of that section and the child and youth officer receives a request for access to the record, the child and youth officer must refuse to disclose the record and must transfer the request, and, if necessary, the record, to the other public body.

(3) If the child and youth officer has custody of a record made under the *Child, Family and Community Service Act* and the child and youth officer receives a request for access to the record, the child and youth officer must refuse to disclose the record and must transfer the request, and, if necessary, the record, to the minister responsible for that Act.

### **Power to make regulations**

**13** The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

### **Review of Act**

**14** In order to determine whether the functions of the child and youth officer are still required to ensure that the needs of children and youth are met, the Attorney General, within 5 years of the coming into force of this Act, must undertake a comprehensive review of this Act.

### **Transitional**

**15** (1) On the repeal of the *Children's Commission Act*, the following rules apply:

(a) an accepted complaint under that Act that has not been disposed of is continued before the child and youth officer, or an employee designated by the child and youth officer, as if the child and youth officer or the designated employee were a panel under section 14 (1) (c) of the repealed Act, and for that purpose sections 13 to 16 of the repealed Act apply and the child and youth officer may make public any decision, recommendation or response to a recommendation;

(b) an investigation under the *Children's Commission Act* into a child's death that has not been completed may be continued as an investigation by a coroner under the *Coroners Act*;

(c) if an investigation under the *Children's Commission Act* into a child's death has been completed but the report of the commissioner has not been released, the report must be delivered to the child and youth officer, who may make the report public;

(d) all records relating to the investigation of a child's death must be transferred to the coroner, who must apply the confidentiality provisions that governed records under the *Children's Commission Act* in respect of any records originally produced under that Act;

(e) all records under the *Children's Commission Act* must be transferred to the child and youth officer, who must apply the confidentiality provisions that governed records under the *Children's Commission Act* in respect of any records originally produced under that Act.

(2) For the purposes of this Act but subject to section 60 of the *Coroners Act*, the coroner may disclose to the child and youth officer any records transferred to the coroner under subsection (1) (d) of this section.

(3) On the repeal of the *Child, Youth and Family Advocacy Act*,

(a) an open individual advocacy matter under that Act that has not been disposed of may be continued by the child and youth officer under this Act, and

(b) all records under the *Child, Youth and Family Advocacy Act* must be transferred to the child and youth officer, who must apply the confidentiality provisions that governed records under the *Child, Youth and Family Advocacy Act* in respect of any records originally produced under that Act.

### **Sections Spent**

16 to 22 [Consequential amendments and repeals. Spent. 2002-50-16 to 22.]

### **Commencement**

23 This Act comes into force by regulation of the Lieutenant Governor in Council.

### **BC Regulations**

B.C. Reg. 250/97

### ***Office for Children and Youth Act***

### **CHILDREN'S COMMISSION REGULATION**

[includes amendments up to B.C. Reg. 370/97]

### **Part 1 — Interpretation and Multi-disciplinary Teams of Advisors**

#### **Definitions**

1 In this regulation:

"**aboriginal child**" means an aboriginal child as defined in the *Child, Family and Community Service Act*;

"**Act**" means the *Children's Commission Act*<sup>1</sup>;

"**advocate**" means the Child, Youth and Family Advocate appointed under the *Child, Youth and Family Advocacy Act*<sup>2</sup>;

"**caregiver**" means a caregiver as defined in the *Child, Family and Community Service Act*;

"**designated representative**" means a designated representative as defined in the *Child, Family and Community Service Act*;

#### **Designated services**

2 (1) A service or program provided by the Ministry for Children and Families for a child in care, a child in the charge of the director or a child in the director's care under the *Child, Family and Community Service Act* or the *Family Relations Act* is designated for the purpose of section 4 (1) (b) of the Act.

(2) A service or program provided by the Ministry for Children and Families for a child is designated for the purposes of section 4 (1) (d) and (f) (ii) of the Act.

[en. B.C. Reg. 370/97.]

### **Prescribed ministries or agencies**

**3** The Ministry for Children and Families is prescribed for the purposes of section 4 (1) (d) and (e) of the Act.

### **Multi-disciplinary team of advisors**

**4** (1) The Children's Commissioner may establish a multi-disciplinary team of advisors (a) to advise the children's Commissioner and each deputy commissioner on the following matters:

- (i) the development of the process for the review of children's deaths and critical injuries;
- (ii) the conduct of investigations, including the identification of issues to be followed up on by investigators in individual investigations;
- (iii) the content of reports and the formulation of recommendations presented by the Children's Commissioner on each death and critical injury, and

(b) to participate in the identification, tracking and description of systemic and cross-jurisdictional issues identified in death and critical injury reviews carried out by the commission.

(2) The Children's Commissioner may appoint the members of the multi-disciplinary team for the term and in the manner the Children's Commissioner considers appropriate.

### **Disclosure to multi-disciplinary team of advisors**

**5** The commission may disclose to a member of the multi-disciplinary team of advisors any information the Children's Commissioner determines may be required to enable the multi-disciplinary team to carry out its powers, duties and functions under the Act and this regulation.

## **Part 2 — Complaints**

### **Division 1 — Tribunal Division Panels**

#### **Criteria for appointment to roster of panel members**

**6** To be eligible for appointment to the roster of panel members, a person must demonstrate an understanding of

- (a) key aspects of British Columbia's child, youth, family and community service system, including governing legislation, policy and service delivery mechanisms,
- (b) the essential elements of conducting a fair and objective review,
- (c) alternate dispute resolution processes,
- (d) child and youth development and the special circumstances, rights including those under section 70 of the *Child, Family and Community Service Act*, and service needs of children in care or otherwise served by the child service system of government,
- (e) the characteristics of British Columbia's diverse cultural, racial, linguistic and religious communities and the unique issues that affect aboriginal children, their families and communities, and
- (f) effective communication with children, including children who have special service needs.

#### **Conflict of interest**

**7** A member appointed to the roster of panel members by the minister, is not eligible to be designated under section 14 of the Act as a panel member to review a complaint if the

member's participation in the panel would give rise to a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to conduct the review of that complaint may be affected by his or her private interest.

## **Division 2 — Review Procedure for Rights of Children in Care**

### **Notice of refusal or deferral of complaints**

**8** If, in accordance with section 11 of the Act, the commission decides to refuse to accept a complaint or to defer a complaint, the commission must notify the following of the refusal or deferral of the complaint:

- (a) the complainant;
- (b) the director caring for the child;
- (c) the child, if he or she is 12 years of age or more and is not the complainant.

### **Notice to others of the commission's acceptance of a complaint**

**9** After the acceptance of a complaint, the commission may give notice of a review to any of the following in addition to the persons referred to in section 12 of the Act:

- (a) the child, even though the child is under 12 years of age, if, in the commission's opinion, the child has a sufficient level of understanding;
- (b) the caregiver;
- (c) a designated representative of an Indian band or aboriginal community who is or was entitled under Part 3 of the *Child, Family and Community Service Act* to notice of a hearing relating to the child;
- (d) the advocate;
- (e) any other person the commission considers appropriate.

### **Who is a party to the review proceeding?**

**10** The following persons are parties to a review by a panel:

- (a) the complainant;
- (b) the director caring for the child;
- (c) if the child is an aboriginal child, the designated representative of the Indian band or aboriginal community;
- (d) any other person that the panel recognizes as a party.

### **Who may make representations to a panel?**

**11** Any of the following may make representations to the panel in the manner specified by the panel under section 12 (1) (a):

- (a) any person who is a party to the review;
- (b) any other person who receives notice under section 9;
- (c) any other person that the panel may permit, either at that person's request or on the panel's initiative.

### **Panel may decide how the review will be conducted**

**12** (1) the panel may determine how a review of a complaint will be conducted, including whether

- (a) representations are to be made to the panel in person, in writing, by conference call or by any other means,
- (b) to use or refer any aspect of the review to an alternate dispute resolution process,

(c) to adjourn the review until an alternate dispute resolution process is completed,  
(d) to hold a conference to consider any matter that might expedite the review and the panel may make a direction for the purpose of expediting the review, or  
(e) to terminate the review if the complaint is settled to the satisfaction of the Children's Commissioner.

(2) Hearings before the panel may be as informal as the panel allows and the panel is not bound by the rules of evidence.

### **Confidentiality**

**13** (1) Unless the panel orders otherwise, hearings before the panel are not open to the public.

(2) All documents and all submissions presented to the panel must be kept in confidence and must not be revealed to any persons, except the panel, the commission, the parties or their counsel unless otherwise directed by the panel or the commission.

### **If the panel has more than one member**

**14** (1) If a panel has more than one member, the decision of the majority of the panel is the panel's decision.

(2) If there is no majority, the decision of the member chairing the panel is the panel's decision.

### **Special provisions to hear from the child**

**15** (1) In the course of a review the panel may hear directly from the child to whom the complaint relates.

(2) If the panel believes that it is not in the child's interests to attend a hearing, the panel may interview the child in the absence of any or all of the parties at such time and place as the panel considers most appropriate to obtain the child's evidence.

(3) If the panel interviews a child in the absence of a party to the review, the panel must provide to the party a written summary of the interview of the child.

(4) In conducting an interview or in hearing directly from a child, the panel must take into account the child's level of development, culture and kinship relationships.

### **Advocate may appear with child who gives evidence**

**16** (1) If a panel wishes to hear directly from the child in accordance with section 15, it must notify the advocate of its intention to do so.

(2) The advocate may appear with a child who gives evidence to a panel under section 15.

### **Notice of panel's decision**

**17** (1) The panel must provide to the parties to the review a copy of its decision, the reasons and any order or recommendation made on the review.

(2) The commissioner must provide to the parties to the review a copy of any reasons received in response to the panel's recommendations, any modification of the panel's recommendations and any report made by the Children's Commissioner under section 17 (2) of the Act.

### **Termination or dismissal of an investigation or review**

**18** After accepting a complaint, the commission may at any time terminate or dismiss the investigation or review of the complaint, if the commission determines that any of the following apply:

- (a) the complaint should have been refused under section 11 of the Act;
- (b) the complaint has been withdrawn or abandoned by the complainant;
- (c) if the complainant is not the child, the child requests that the complaint be withdrawn;
- (d) the law or existing administrative procedure provides or has already provided a remedy adequate in the circumstances of the complaint or the substantive issues relating to the complaint are already before a court;
- (e) no apparent benefit or reasonable prospect of benefit to the child will be obtained by proceeding with the review.

### **Notice of termination or dismissal**

**19** If the commission decides to terminate or dismiss an investigation or review, the commission must notify the following persons of its decision:

- (a) the child to whom the complaint relates;
- (b) the complainant;
- (c) other parties to the review.

### **Division 3 — Personal Information**

#### **Security and retention of personal information**

**20** The commission and the members of a panel must protect personal information obtained by them in the course of an investigation or review by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

### **Part 3 — Transitional Provision**

#### **Transition for matters before the Child and Family Review Board**

**21** Complaints and other matters begun before the Child and Family Review Board before the Act comes into force under sections 83 to 88 of the *Child, Family and Community Service Act* must be completed by the commission as if those sections were still in force.

1. see now *Office for Children and Youth Act*, S.B.C. 2002, C. 50.

2. Act repealed: 2002-50-22

[Provisions of the *Office for Children and Youth Act*, S.B.C. 2002, c. 50, relevant to the enactment of this regulation: sections 13 and 15]

## **Alberta**

### ***Child Welfare Act, R.S.A. 2000, c. C-12***

#### Office of Children's Advocate

3(1) The Lieutenant Governor in Council may, on the recommendation of the Minister, appoint a Children's Advocate, who shall hold office for a term not exceeding 5 years.

(2) The Minister may authorize and provide for the payment of the remuneration and expenses of the Children's Advocate and for the office and staff of the Children's Advocate.

(3) The Children's Advocate shall

- (a) advise the Minister on matters relating to the welfare and interests of children who receive services under this Act and the provision of those services;
- (b) receive, review and investigate complaints or concerns that come to the attention of the Children's Advocate respecting children who receive services under this Act;
- (c) represent the rights, interests and viewpoints of children who receive services under this Act;
- (d) perform additional duties and functions that are conferred on the Children's Advocate by the regulations or are from time to time assigned to the Children's Advocate by the Minister;
- (e) prepare and submit annual reports to the Minister respecting the exercise of the duties and functions of the Children's Advocate.

(4) On receiving a report under subsection (3)(e), the Minister shall lay a copy of the report before the Legislative Assembly if it is then sitting, and if not, within 15 days after the commencement of the next sitting.

(5) For the purpose of performing the duties and functions of the Children's Advocate, the Children's Advocate may

- (a) communicate with and visit a child who is receiving services under this Act or a guardian or other person who represents the child;
- (b) have access to information relating to a child that is in the possession of a director or other person or agency providing services to a child on behalf of a director;
- (c) at the request of a child who is receiving services under this Act, the Minister or any person acting on the child's behalf, receive, review or investigate and make recommendations regarding any matter relating to the provision of services to the child under this Act;
- (d) provide information relating to, speak on behalf of and otherwise represent a child who is receiving services under this Act when major decisions relating to the child are being made under this Act;
- (e) on the initiative of the Children's Advocate or at the request of a child who is receiving services under this Act, assist in appealing or reviewing a decision of a director relating to the child;

(f) provide assistance and advice to an Appeal Panel or a Court with respect to a child who is receiving services under this Act.

(6) The Children's Advocate may delegate any duty or function conferred or imposed on the Children's Advocate under this Act or the regulations in respect of a child

(a) to a person employed or engaged in the administration of this Act, or

(b) to a person who provides care to the child, represents the child or is concerned about the welfare of the child. 1988 c15 s4;1990 c29 s3

## **Saskatchewan**

*Ombudsman and Children's Advocate Act*, R.S.S. 1978, c. O-4

### **PART III**

#### *Children's Advocate Appointment of Children's Advocate*

12.1(1) There shall be appointed, as an officer of the Legislature, a Children's Advocate.

(2) Subject to section 12.21, the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint the Children's Advocate.

(3) Unless he or she resigns, dies or is removed from office, the Children's Advocate holds office for a term of five years.

(4) The Children's Advocate may be reappointed for one additional term of five years.

(5) The Children's Advocate may, at any time, resign his or her office by writing to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province. 1994, c.7, s.12. 12.11 Repealed. 2000, c.20, s.7.

#### *Removal or suspension*

12.2 The Lieutenant Governor in Council, on a resolution of the Assembly shall remove the Children's Advocate from his or her office or suspend him or her according to the resolution. 1994, c.7, s.12.

#### *Suspension when Legislature not in session*

12.21(1) When the Legislature is not in session, the Lieutenant Governor in Council may suspend the Children's Advocate for incapacity to act, neglect of duty or misconduct proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next session of the Legislature.

(2) Where the office of Children's Advocate is vacant or the Children's Advocate is suspended pursuant to subsection (1), the Lieutenant Governor in Council shall appoint an acting Children's Advocate to hold office until a person is appointed as Children's

Advocate pursuant to section 12.1 or the suspension has been dealt with by the Assembly. 1994, c.7, s.12; 2000, c.20, s.8.

*Salary of the Children's Advocate*

12.3(1) Subject to subsections (2) and (3), the Children's Advocate is to be paid a salary equal to the average salary of all the deputy ministers and acting deputy ministers of the Government of Saskatchewan calculated as at April 1 in each year.

(2) Any benefits or payments that may be characterized as deferred income, retirement allowances, separation allowances, severance allowances or payments in lieu of notice are not to be included in calculating the average salary of all the deputy ministers and acting deputy ministers pursuant to subsection (1).

(3) If, as a result of a calculation made pursuant to subsection (1), the salary of the Children's Advocate would be less than the Children's Advocate's previous salary, the Children's Advocate is to be paid not less than his or her previous salary.

(4) The Children's Advocate is entitled to receive any benefits of office and economic adjustments that are provided generally to deputy ministers.

(5) The Children's Advocate is entitled to be paid an allowance for travel and other expenses incurred in the performance of the duties of the Children's Advocate at a rate approved pursuant to The Public Service Act, 1998 for employees of the public service.

(6) The salary of the Children's Advocate shall be paid out of the general revenue fund.

*Appointment of staff and application of certain Acts*

12.31(1) The Children's Advocate may appoint the employees that are required in order to carry out the duties and responsibilities of the Children's Advocate effectively.

(2) The Public Service Act, 1998, The Public Service Superannuation Act and The Superannuation (Supplementary Provisions) Act apply to the persons appointed pursuant to subsection (1).

(3) The Children's Advocate is not subject to The Public Service Act, 1998, except section 32 of that Act.

(4) The Children's Advocate is subject to The Public Service Superannuation Act and The Superannuation (Supplementary Provisions) Act. 1998, c.P-42.1, s.42. Oath of office 12.4 The Children's Advocate shall, before entering on the duties of his or her office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

OATH OF OFFICE "I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of the Children's Advocate and that I will not, except as provided in The Ombudsman and Children's Advocate Act, divulge any information

received by me in the exercise of my powers or the performance of my duties and functions pursuant to that Act".

*Oath of office re staff*

12.41 Every person appointed pursuant to section 12.31 shall, before entering on the duties of his or her office, take and subscribe before the Children's Advocate the following oath: OATH OF OFFICE "I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Children's Advocate and that I will not, except as provided in The Ombudsman and Children's Advocate Act, divulge any information received by me in the exercise of my powers or the performance of my duties and functions pursuant to that Act".

*Confidentiality*

12.5(1) The Children's Advocate and every member of his or her staff shall maintain confidentiality in respect of all matters that come to his or her knowledge in the performance of duties or the exercise of powers pursuant to this Act, and shall not disclose any matter except as provided in this Act.

(2) In the performance of his or her duties or in the exercise of his or her powers, the Children's Advocate may disclose any matter, subject to this section, that the Children's Advocate considers necessary.

(3) Any report the Children's Advocate makes pursuant to this Act shall not disclose the name of or any identifying information about any child involved in an investigation, any parent or guardian of the child or any complainant, except where, in the Children's Advocate's opinion, the interests of any of the following clearly outweigh any invasion of privacy that could result from the disclosure: (a) the public; (b) any department or agency of the government; (c) any person.

(4) Notwithstanding anything else in this section, the Children's Advocate shall not disclose information relating to the granting of an order of adoption unless authorized or permitted to do so pursuant to The Adoption Act. 1994, c.7, s.12.

*Delegation of powers*

12.51(1) The Children's Advocate may, in writing, delegate to any member of his or her staff any of his or her powers pursuant to this Act except the power of delegation pursuant to this section and the power to make a report pursuant to this Act.

(2) A delegation may be made to a specified person of the staff of the Children's Advocate or to the holder, for the time being, of a specified office or to the holders of offices of a specified class of the staff.

(3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Children's Advocate.

(4) A delegation may be made subject to those restrictions and conditions that the Children's Advocate thinks fit and may be made either generally or in relation to a particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor, and where the Children's Advocate who made the delegation ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.

(6) Where the Children's Advocate has delegated a power pursuant to this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his or her authority to exercise the power. 1994, c.7, s. 12.

#### *Powers and responsibilities*

12.6(1) The Children's Advocate has the power to do all things necessary to carry out the responsibilities given to the Children's Advocate pursuant to this Act.

(2) The Children's Advocate shall: (a) become involved in public education respecting the interests and well-being of children; (b) receive, review and investigate any matter that comes to his or her attention from any source, including a child, concerning: (i) a child who receives services from any department or agency of the government; (ii) a group of children who receive services from any department or agency of the government; and (iii) services to a child or to a group of children by any department or agency of the government; (c) where appropriate, try to resolve those matters mentioned in clause (b) that come to his or her attention through the use of negotiation, conciliation, mediation or other non-adversarial approaches; and (d) where appropriate, make recommendations on any of those matters mentioned in clause (b).

(3) The Children's Advocate may: (a) conduct or contract for research to improve the interests and well-being of children; (b) advise any minister responsible for services to children on any matter relating to the interests and well-being of children who receive services from any department or agency of the government; (c) Repealed. 2000, c.20, s.10. 1994, c.7, s.12; 2000, c.20, s.10.

#### *Referrals by committee of the Assembly and Lieutenant Governor in Council*

12.61(1) A committee of the Assembly may, at any time, refer to the Children's Advocate for review, investigation and report any petition or matter relating to the interests and well-being of children that is before the committee for consideration.

(2) The Children's Advocate shall: (a) subject to any special directions of the committee, investigate the petition or matter referred to him or her as far as it is within his or her jurisdiction; and (b) make any report to the committee that he or she thinks fit.

(3) The Lieutenant Governor in Council may, at any time, refer to the Children's Advocate for review, investigation and report any matter relating to the interests and well-being of children and services to children by any department or agency of the

government or by any officer, employee or member of any department or agency of the government.

(4) The Children's Advocate shall: (a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him or her as far as it is within his or her jurisdiction; and (b) make any report to the Lieutenant Governor in Council that he or she thinks fit. 1994, c.7, s.12.

*Communication by child*

12.7(1) Where a child in a facility, foster home, group home or other home or place in which he or she is placed pursuant to an Act that authorizes services to children, asks to communicate with the Children's Advocate, that request shall be forwarded to the Children's Advocate immediately by the person in charge of that place. (2) Where the child writes a letter addressed to the Children's Advocate, the person in charge of the place shall forward the letter immediately, unopened, to the Children's Advocate. 1994, c.7, s.12.

*Report to child*

12.8 Where an investigation by the Children's Advocate involves a review of a complaint about services from any department or agency of the government to a child, the Children's Advocate may, in a manner that the Children's Advocate considers appropriate: (a) report the results of the investigation to the parent or guardian of that child; (b) report the results of the investigation to the child. 1994, c.7, s.12.

*Provisions apply*

12.9 Part IV applies to the Children's Advocate and employees of the Children's Advocate with any modification that is necessary in the circumstances. 1994, c.7, s.12.  
[Part IV of the *Act* deals with procedures for carrying out investigations, such as giving notice)

**Manitoba**

*The Child and Family Services Act*, C.C.S.M. c. C80,

PART I.1

OFFICE OF CHILDREN'S ADVOCATE

*Appointment of Children's Advocate*

8.1(1) The Lieutenant Governor in Council shall, on the recommendation of the Standing Committee of the Assembly on Privileges and Elections, appoint a Children's Advocate.

*Recommendation of Committee on Privileges and Elections*

8.1(2) Where

- (a) the office of the children's advocate is vacant;
- (b) the term of the children's advocate in office will expire within 12 months; or

(c) the children's advocate has tendered his or her resignation to take effect within 12 months; the President of the Executive Council shall convene a meeting of the Standing Committee of the Assembly on Privileges and Elections which shall consider persons suitable to be appointed as children's advocate and shall make a recommendation respecting an appointment to the President of the Executive Council.

*Officer of Legislature*

8.1(3) The children's advocate is an officer of the Legislature and is not eligible to be nominated for, elected as, or sit as, a member of the Assembly.

*Term of office*

8.1(4) The children's advocate shall hold office for three years from the date of appointment, unless he or she sooner resigns, dies or is removed from office.

*Re-appointment*

8.1(5) The children's advocate may, after a review by the Standing Committee of the Assembly on Privileges and Elections, be re-appointed for a second term of three years, but the children's advocate shall not hold office for more than two terms of three years.

*Resignation*

8.1(6) The children's advocate may resign at any time by notifying the Speaker of the Assembly or, if there is no Speaker or the Speaker is absent, the Clerk of the Assembly.

*Removal or suspension*

8.1(7) The Lieutenant Governor in Council shall remove the children's advocate from office or suspend the children's advocate on a resolution of the Assembly carried by a vote of 2/3 of the members present in the Assembly.

*Suspension when Assembly not sitting*

8.1(8) If the Assembly is not sitting, the Lieutenant Governor in Council may suspend the children's advocate for cause or incapacity, but the suspension shall not continue in force beyond the end of the next session of the Legislature.

*Acting children's advocate*

8.1(9) The Lieutenant Governor in Council may appoint an acting children's advocate if the office of children's advocate is vacant or if the children's advocate is suspended or removed or is absent for an extended period because of illness or another reason.

*Term of acting children's advocate*

8.1(10) An acting children's advocate holds office until

- (a) a person is appointed under subsection (1);
- (b) the suspension of the children's advocate ends; or
- (c) the children's advocate returns to office after an extended absence;

as the case may be.

*Salary*

8.1(11) The children's advocate shall be paid a salary fixed by the Lieutenant Governor in Council, which shall be charged to and paid out of the Consolidated Fund.

*Reduction of salary*

8.1(12) The salary of the children's advocate shall not be reduced except on a resolution of the Assembly carried by a vote of 2/3 of the members present in the Assembly.

*Expenses*

8.1(13) The children's advocate shall be paid for travelling and out of pocket expenses incurred in the performance of duties.

*Application of The Civil Service Superannuation Act*

8.1(14) The children's advocate, and all persons employed under him or her, are employees within the meaning of *The Civil Service Superannuation Act*.

*Application of The Civil Service Act*

8.1(15) The children's advocate is not subject to *The Civil Service Act* except section 44 as it applies to elections other than provincial general elections and by-elections.

*Privileges and perquisites of office*

8.1(16) The children's advocate is entitled to the privileges and perquisites of office, including holidays, vacations, sick leave and severance pay, of a member of the civil service who is not covered by a collective agreement.

*Employees under children's advocate*

8.1(17) *The Civil Service Act* applies to persons employed under the children's advocate.

*Oath of office*

8.1(18) Before beginning to perform his or her duties, the children's advocate shall take an oath before the Speaker of the Assembly or the Clerk of the Assembly to faithfully and impartially perform the duties of office and to not, except as provided in this Act, divulge any information received by him or her under this Act.

*Oath of staff*

8.1(19) Every person employed under, or acting as a delegate of, the children's advocate shall, before beginning to perform his or her duties, take an oath before the children's advocate to not divulge, except as provided in this Act, any information received by him or her under this Act.

## DUTIES

### *Duties of children's advocate*

8.2(1) The children's advocate shall

- (a) advise the minister on matters
  - (i) relating to the welfare and interests of children who receive or may be entitled to receive services under this Act, or
  - (ii) relating to services provided or available to children under this Act;
- (b) review and investigate complaints that he or she receives
  - (i) relating to children who receive or may be entitled to receive services under this Act, or
  - (ii) relating to services provided or available to children under this Act;
- (c) in response to a request, represent, other than as legal counsel, the rights, interests and viewpoints of children who receive or may be entitled to receive services under this Act;
- (d) prepare and submit an annual report to the Speaker of the Assembly respecting the performance of the duties and the exercise of the powers of the children's advocate.  
Annual report to be tabled

8.2(2) The Speaker shall lay a copy of the report of the children's advocate before the Legislative Assembly within 15 days of receiving it if the Legislative Assembly is then in session, or if it is not then in session, within 15 days of the beginning of the next session.

## REFERRALS

### *Referrals by committee of Assembly*

- 8.2.1(1) The Standing Committee of the Assembly on Privileges and Elections may refer to the children's advocate for review, investigation and report any matter relating to
- (a) the welfare and interests of children who receive or may be entitled to receive services under this Act; or
  - (b) services provided or available to children under this Act.

### *Report to committee by children's advocate*

- 8.2.1(2) Upon receiving a referral under subsection (1), the children's advocate shall
- (a) subject to any special directions of the committee, review and investigate the matter to the extent that it is within his or her jurisdiction; and
  - (b) make any report to the committee that he or she considers appropriate.

### *Referral by minister*

- 8.2.2(1) The minister may refer to the children's advocate for review, investigation and report any matter relating to
- (a) the welfare and interests of children who receive or may be entitled to receive services under this Act; or
  - (b) services provided or available to children under this Act.
- Report to minister

8.2.2(2) Upon receiving a referral under subsection (1), the children's advocate shall

- (a) subject to any special directions of the minister, review and investigate the matter referred to the extent that it is within his or her jurisdiction; and
- (b) make any report to the minister that he or she considers appropriate.

## POWERS

### *Powers of children's advocate*

8.3 The children's advocate may exercise the following powers:

- (a) to conduct inquiries, investigate, report on, and make recommendations regarding any matter
  - (i) relating to children who receive or may be entitled to receive services under this Act, or
  - (ii) relating to services provided or available to children under this Act;
- (b) to inspect any treatment centre, group home or other home or place in which a child is placed in accordance with the provisions of this Act;
- (c) to examine and obtain a copy of any record, paper or thing which, in the opinion of the children's advocate, relates to any matter being investigated by him or her, and which is in the possession of an authority, the director, an agency or the person in charge of any of the places mentioned in clause (b);
- (d) to communicate with and visit a child who is receiving or has received services under this Act, or a guardian or other person who represents the child;
- (e) other than as legal counsel, to represent the rights, interests and viewpoints of a child who is receiving services under this Act when decisions relating to the child are being made under this Act;
- (f) to solicit, accept and review reports from individuals or organizations concerned or involved with the welfare of children or families, or both.

### *Delegation*

8.4 The children's advocate may in writing authorize any person to perform any of the duties or exercise any of the powers of the children's advocate except the power of delegation under this section and the power to make reports under this Act.

### *Right of entry*

8.5 The children's advocate may, for the purposes of carrying out his or her duties or powers under this Act, at any reasonable time enter the premises occupied by an authority, the director or an agency, or a treatment centre, group home or other home or place in which a child is placed in accordance with the provisions of this Act.

### *Information to be furnished*

8.6 The children's advocate may require any person who in the opinion of the children's advocate is able to give any information relating to any matter being investigated by him or her

- (a) to furnish the information to the children's advocate; and
- (b) to produce any record, paper or thing which, in the opinion of the children's advocate, relates to the matter being investigated and which may be in the possession or under the control of that person;

but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

*Proceedings re furnishing information prohibited*

8.7 No proceedings lie against a person by reason of his or her compliance with a requirement of the children's advocate to furnish information or produce any record, paper or thing, or by reason of answering any question in an investigation by the children's advocate.

*Report to director, authority and agency*

8.8(1) After making an investigation under this Act, the children's advocate shall make a written report to the director and to any authority or agency involved setting out his or her conclusions as to the matter being investigated and reasons for the conclusions, and may make such recommendations as the children's advocate considers appropriate.

*Report to parent and child*

8.8(2) Where an investigation by the children's advocate involves a review of a complaint about services to a child, the children's advocate, in such manner as he or she considers appropriate,

- (a) shall report the results of the investigation to the parent or guardian of that child;
- (b) shall report the results of the investigation to the child if he or she is 12 years of age or more; and
- (c) may report the results of the investigation to the child if he or she is less than 12 years of age and the children's advocate considers it appropriate to do so.

*Report to placement centre*

8.8(3) Where an investigation by the children's advocate involves a treatment centre, group home or other home or place in which a child is placed in accordance with the provisions of this Act, the children's advocate may report the results of the investigation to the person in charge of that place, in such manner as the children's advocate considers appropriate.

*Report to complainant*

8.8(4) The children's advocate may report the results of an investigation to a complainant in such manner as the children's advocate considers appropriate.

*Communication by child*

8.9 Where a child in a treatment centre, group home or other home or place in which he or she is placed in accordance with the provisions of this Act

- (a) asks to communicate with the children's advocate, that request shall be forwarded to the children's advocate immediately; or
- (b) writes a letter addressed to the children's advocate, the person in charge of the place shall forward the letter immediately, unopened, to the children's advocate.

*Secrecy*

8.10(1) The children's advocate shall maintain secrecy in respect of all matters that come to his or her knowledge in the performance of duties or the exercise of powers under this Act, and shall not disclose any matter except as provided in this Act.

*Disclosure re duties and power*

8.10(2) Subject to subsections (3), (4) and (5), in the performance of duties or the exercise of powers the children's advocate may disclose any matter which the children's advocate considers necessary.

*Disclosure in reports*

8.10(3) Subject to subsection (5), in a report referred to in section 8.8, 8.2.1 or 8.2.2 the children's advocate may disclose any matter which the children's advocate considers necessary relating to his or her conclusions, reasons and recommendations.

*Disclosure in annual reports*

8.10(4) Subject to subsection (5), in an annual report made under clause 8.2(1)(d) the children's advocate may disclose any matter which he or she considers necessary relating to the performance of the duties and exercise of the powers of the children's advocate, but shall not disclose the name of any individual, or any identifying information as to any child involved in an investigation, any parent or guardian of such a child, or any complainant.

*Disclosure re adoption records*

8.10(5) The children's advocate shall not disclose identifying information relating to the granting of an order of adoption under *The Adoption Act*.

*Proceedings against children's advocate prohibited*

8.11 No proceedings lie against the children's advocate for any act done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power under this Act, or for any neglect or default in the performance or exercise in good faith of such duty or power.

*Offence and penalty*

8.12 Every person who

(a) without lawful justification or excuse wilfully obstructs, hinders, or resists the children's advocate in the performance of his or her duties or the exercise of his or her powers under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the children's advocate; or

(c) wilfully makes any false statement to or misleads or attempts to mislead the children's advocate in the performance of his or her duties or the exercise of his or her powers under this Act;

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$500. or to imprisonment for a term not exceeding three months, or to both.

8.13 Repealed.

*Rules by Assembly*

8.14(1) The Assembly may make general rules for the guidance of the children's advocate in the performance of duties and the exercise of powers under this Act.

*Procedure of children's advocate*

8.14(2) Subject to this Act and any rules made under subsection (1), the children's advocate may determine his or her procedure.

## **Ontario**

*Child and Family Services Act*, R.S.O. 1990, c. C.11

*Office of Child and Family Service Advocacy*

**102.** The Office of Child and Family Service Advocacy is continued under the name Office of Child and Family Service Advocacy in English and Bureau d'assistance à l'enfance et à la famille in French, to,

(a) co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek approved services or services purchased by approved agencies;

(b) advise the Minister on matters and issues concerning the interests of those children and families; and

(c) perform any similar functions given to it by this Act or the regulations or another Act or the regulations made under another Act. R.S.O. 1990, c. C.11, s. 102.

## **Quebec**

*Youth Protection Act* R.S.Q., chapter P-34.1

s. 1 "Commission";

(a) "Commission" means the Commission des droits de la personne et des droits de la jeunesse established by the Charter of human rights and freedoms (chapter C-12);

"tribunal";

(g) "tribunal" means the Court of Québec established by the Courts of Justice Act (chapter T-16);

*Confidential communication.*

9. Any child placed in a foster family or by an institution which operates a rehabilitation centre has the right to communicate in all confidentiality with his advocate, the director who has taken charge of his situations, the **Commission** and the judges and clerks of the tribunal.

*Confidential communications.*

He may also communicate in all confidentiality with his parents, brothers and sisters, unless the tribunal decides otherwise.

*Confidential communications.*

He may also communicate in all confidentiality with any other person unless the tribunal decides otherwise or the executive director of the institution operating the rehabilitation centre or the person he authorizes in writing considers it to be in the best interests of the child to prevent him from communicating with that person. The decision of the executive director must give reasons, be rendered in writing and be given to the child and, whenever possible, to the child's parents.

*Referral to the tribunal.*

The child or his parents may refer to the tribunal any decision of the executive director preventing him from communicating with any person. This motion is heard and decided by preference.

*Decision of the tribunal.*

The tribunal shall confirm or quash the decision of the executive director. It may, in addition, order the executive director to take certain measures relating to the right of the child to communicate thenceforth with the person contemplated in the decision of the executive director or with any other person.

1977, c. 20, s. 9; 1981, c. 2, s. 3; 1984, c. 4, s. 7; 1988, c. 21, s. 119; 1989, c. 53, s. 11, s. 12; 1992, c. 21, s. 212; 1994, c. 35, s. 8.

*Disciplinary measure.*

10. Every disciplinary measure taken by an institution operating a rehabilitation centre in respect of a child must be taken in the child's interest and in conformity with internal rules that must be approved by the board of directors and posted in a conspicuous place in the facilities of the institution. The institution must ensure that the rules are explained to the child and to the child's parents.

*Copy of the rules.*

A copy of the internal rules must be given to the child, if he is capable of understanding, and to the child's parents. A copy of the rules must also be sent to the *Commission*, to the Minister of Health and Social Services, to the regional board and to the institution operating the child and youth protection centre. 1977, c. 20, s. 10; 1984, c. 4, s. 8; 1985, c. 23, s. 24; 1989, c. 53, s. 12; 1992, c. 21, s. 213, s. 375; 1994, c. 35, s. 9.

*Duties of the Commission.*

23. The Commission shall, in conformity with the other provisions of this Act, discharge the following duties:

(a) it shall ensure, by any appropriate measures, the promotion and protection of the rights of children which are recognized by this Act and the Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1);

- (b) upon an application or of its own motion, it shall investigate any situation where it has reason to believe that the rights of a child or of a group of children have been encroached upon by persons, institutions or bodies, unless the tribunal is already seized of it;
- (c) it shall take the legal means it considers necessary to remedy any situation where the rights of a child are being encroached upon;
- (d) it shall prepare and implement information and educational programs on the rights of children for the benefit of the public in general and of children in particular;
- (e) it may, at all times, make recommendations, in particular, to the Minister of Health and Social Services, the Minister of Education and to the Minister of Justice;
- (f) it may carry out or cause to be carried out studies and research on any question related to its competence, of its own motion or at the request of the Minister of Health and Social Services and of the Minister of Justice.

*Discharge of duty.*

23.1. The duty provided for in paragraph b of section 23 must be discharged by a group of not less than three members of the Commission designated by the president.

*Decisions.*

However, the decision to hold an investigation, to file an application for the disclosure of information under the second paragraph of section 72.5 or to disclose information under the second paragraph of section 72.6 or under section 72.7 shall be made by the president or by a person designated by the president from among the members of the Commission or its personnel.

*Review.*

The Commission may review the decision to hold an investigation made under the second paragraph.

*Duties.*

24. The duties provided for in paragraph c of section 23 and in sections 25.2 and 25.3 may be discharged, on behalf of the Commission, by a group of members designated pursuant to the first paragraph of section 23.1.

*Access.*

25. A member of the Commission or any person in its employment may, with the written authorization of a justice of the peace, enter premises in which he has reasonable cause to believe there is a child whose security or development is or may be considered to be in danger and where entry is necessary for the purposes of an inquiry of the Commission.

*Authorization granted.*

The justice of the peace may grant the authorization, subject to such conditions as he may specify therein, if he is satisfied on the basis of a sworn statement by the member of the Commission or the person in the employment of the Commission that there is reasonable cause to believe that there is therein a child whose security or development is or may be considered to be in danger and if entry therein is necessary for the purposes of an inquiry.

The authorization, whether acted upon or not, shall be returned to the justice of the peace who granted it, within 15 days after its issue.

*No authorization required.*

No authorization is required, however, if the conditions for obtaining it exist and if, owing to exigent circumstances, the time necessary to obtain the authorization may result in danger to the security of a child.

*Recommendation.*

25.2. The Commission may recommend the cessation of the alleged act or the carrying out, within the time it may fix, of any measure designed to remedy the situation.

*Reference to the tribunal. [Court]*

25.3. The Commission may refer the matter to the tribunal when its recommendation has not been complied with within the fixed time.

*Consultation of records.*

26. Notwithstanding section 19 of the Act respecting health services and social services (chapter S-4.2) and section 7 of the Act respecting health services and social services for Cree Native persons (chapter S-5), a member of the Commission or a person in its employment may, at any reasonable time or at any time in an emergency, enter any facility maintained by an institution to consult on the premises the record relating to the case of a child and make copies thereof.

*Transmission.*

The institution shall, on request, transmit a copy of the record to the Commission.

*Identification.*

26.1. Every person acting under section 25 or 26 shall, on request, identify himself and produce a certificate of his capacity.

*Removal of names.*

27. The Commission shall keep a file of the information communicated to it. The name of a child and that of his parents, and any other information making it possible to identify them must be removed from the file not later than on the child's reaching 18 years of age.

## **Nova Scotia**

*Ombudsman Act, R.S.N.S. 1989, c. 327*

No specific legislative mention of Children's Ombudsman – operates under administrative and legislative mandate of the Ombudsman

## Newfoundland and Labrador

### CHILD AND YOUTH ADVOCATE ACT, S.N.L. 2001, c 12.01

(Assented to December 13, 2001)

#### Short title

1. This Act may be cited as the *Child and Youth Advocate Act*.

#### Definitions

2. In this Act

- (a) "advocate" means the Child and Youth Advocate appointed under section 4;
- (b) "agency of the government" means a board, commission, association, or other body of persons, whether incorporated or unincorporated, included in the Schedule;
- (c) "child" means a person under the age of 16 years;
- (d) "Commission of Internal Economy" means the commission established under the *Internal Economy Commission Act*;
- (e) "department" means a department created under the *Executive Council Act*, or a branch of the executive government of the province;
- (f) "service" means a service provided by a department or agency of the government to children and youth the principal objective of which is to benefit children and youth; and
- (g) "youth" means a person who is 16 years of age but under 19 years of age and includes a youth
  - (i) in care or custody under the *Child, Youth and Family Services Act*,
  - (ii) on remand under the *Criminal Code* or the *Young Offenders Act* (Canada),
  - (iii) subject to a sentence under the *Criminal Code*, or
  - (iv) subject to a disposition under the *Young Offenders Act* (Canada),who is under 21 years of age.

#### Office of Child and Youth Advocate established

3. The Office of the Child and Youth Advocate is established

- (a) to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;
- (b) to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;
- (c) to provide information and advice to the government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth; and
- (d) generally, to act as an advocate of the rights and interests of children and youth.

#### **Appointment of the Child and Youth Advocate**

4. (1) The Office of the Child and Youth Advocate shall be filled by the Lieutenant-Governor in Council on a resolution of the House of Assembly.

(2) Before appointing a person as the advocate under subsection (1), the Lieutenant-Governor in Council shall solicit applications for the position from the general public.

(3) Where

(a) the advocate is unable to perform his or her duties of office; or

(b) the office of the advocate is vacant,

the Lieutenant-Governor in Council shall appoint a person to act as the advocate in a temporary capacity.

#### **Officer of House of Assembly**

5. (1) The advocate is an officer of the House of Assembly and is not eligible to be nominated for election to or to be elected as, or to sit as, a member of the House of Assembly.

(2) The advocate shall not hold another public office or carry on a trade, business or profession.

#### **Term of office**

6. (1) Unless he or she sooner resigns, dies or is removed from office, the advocate shall hold office for 6 years from the date of his or her appointment, and he or she may be re-appointed for a second term of 6 years, but not for more than 2 terms of 6 years.

(2) The advocate may resign his or her office in writing addressed to the Speaker of the House of Assembly, or, where there is no Speaker or the Speaker is absent, to the Clerk of the House of Assembly.

#### **Removal or suspension**

7. The Lieutenant-Governor in Council, on a resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting, may remove the advocate from office or suspend him or her because of an incapacity to act, or for neglect of duty, or for misconduct.

#### **Suspension when House of Assembly not sitting**

8. (1) Where the House of Assembly is not in session, the Lieutenant-Governor in Council may suspend the advocate because of an incapacity to act, or for neglect of duty, or for misconduct proved to the satisfaction of the Lieutenant-Governor in Council, but the suspension shall not continue in force beyond the end of the next ensuing session of the House of Assembly.

(2) Where the advocate is suspended under subsection (1), the Lieutenant-Governor in Council shall appoint an acting advocate to hold office until the suspension has been dealt with in the House of Assembly.

#### **Salary and pension**

9. (1) The advocate shall be paid a salary fixed by the Lieutenant-Governor in Council after consultation with the Commission of Internal Economy.

(2) The salary of the advocate shall not be reduced except on resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting.

(3) The advocate is subject to the *Public Service Pensions Act, 1991* where he or she was subject to that Act prior to his or her appointment as advocate.

### **Expenses**

**10.** The advocate shall be paid the travelling and other expenses incurred by him or her in the performance of his or her duties that may be approved by the Commission of Internal Economy.

### **Advocate's staff**

**11.** (1) The advocate may, subject to the approval of the Commission of Internal Economy, and in the manner provided by the *Public Service Commission Act*, appoint those assistants and employees that the advocate considers necessary to enable him or her to carry out his or her functions under this Act.

(2) Persons employed under subsection (1) are members of the public service of the province.

### **Oath of office**

**12.** Before beginning to perform his or her duties, the advocate shall swear an oath or affirm before the Speaker of the House of Assembly or the Clerk of the House of Assembly that he or she shall faithfully and impartially perform the duties of his or her office.

### **Confidentiality of information**

**13.** (1) The advocate and every person employed under him or her shall keep confidential all matters that come to their knowledge in the exercise of their duties or functions under this Act.

(2) Notwithstanding subsection (1), the advocate may disclose in a report made by him or her under this Act those matters which he or she considers it necessary to disclose in order to establish grounds for his or her conclusions and recommendations.

(3) A report the advocate makes under this Act shall not disclose the name of or identifying information about a child or youth or a parent or guardian of the child or youth except and in conformity with the requirement of subsection 29(2).

### **Delegation**

**14.** (1) The advocate may in writing delegate to another person his or her powers under this Act except the power to make a report under this Act.

(2) A person purporting to exercise the power of the advocate by virtue of the delegation under subsection (1) shall produce evidence of his or her authority to exercise that power when required to do so.

### **Powers and Duties of the Advocate**

**15.** (1) In carrying out the duties of his or her office, the advocate may

- (a) receive and review a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate;
  - (b) advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them, whether or not a request or complaint is made to the advocate;
  - (c) where advocacy or mediation or another dispute resolution process has not resulted in an outcome the advocate believes is satisfactory, conduct an investigation on behalf of the child or youth or a group of them, whether or not a request or complaint is made to the advocate;
  - (d) initiate and participate in, or assist children and youth to initiate and participate in, case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services;
  - (e) meet with and interview children and youth;
  - (f) inform the public about the needs and rights of children and youth including about the office of the advocate; and
  - (g) make recommendations to the government, an agency of the government or communities about legislation, policies and practices respecting services to or the rights of children and youth.
- (2) The advocate may not act as legal counsel.

#### **Reference by Lieutenant-Governor in Council**

16. The Lieutenant-Governor in Council or a minister may refer to the advocate, for review, investigation and report by him or her, a matter relating to the interests and well-being of children and youth and the advocate shall,

- (a) subject to a special direction of the Lieutenant-Governor in Council, investigate or review the matter referred to him or her to the extent that it is within his or her jurisdiction; and
- (b) make a report to the Lieutenant-Governor in Council or minister that he or she considers appropriate.

#### **Communication by child or youth**

17. (1) Where a child or youth in a facility, caregiver's home, group home or other home or place in which he or she is placed under an Act of the province, the *Criminal Code* or the *Young Offenders Act* (Canada), asks to communicate with the advocate, that request shall be forwarded to the advocate immediately by the person in charge of the place.

(2) Where a child or youth in a place referred to in subsection (1) writes a letter addressed to the advocate, the person in charge of the place shall forward the letter immediately, unopened, to the advocate.

(3) Every facility, caregiver's home, group home or other home or place in which a child is placed under an Act of the province, the *Criminal Code* or the *Young Offenders Act* (Canada), shall be given written information telling them about the office of the advocate, their right to bring any grievance to the advocate, and how they may contact the advocate.

### **Refusal to investigate or review**

**18.** The advocate, in his or her discretion, may refuse to review or investigate or may cease to review or investigate a complaint where

- (a) it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before the complaint is received by the advocate;
- (b) in his or her opinion it is frivolous or vexatious or not made in good faith or concerns a trivial matter;
- (c) the complainant does not have a sufficient personal interest in the subject matter of the complaint;
- (d) in his or her opinion, upon a balance between the public interest and the person aggrieved, the complaint should not be investigated or the investigation should not be continued;
- (e) in his or her opinion the circumstances of the complaint do not require investigation; or
- (f) the law, or existing administrative procedure, provides a remedy adequate in the circumstances for the person aggrieved and, where the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for his or her failure to do so.

### **Report of refusal to investigate**

**19.** Where the advocate decides not to review or investigate or to cease reviewing or investigating a complaint, he or she shall inform the complainant, and other interested persons, of his or her decision and shall provide to them reasons for his or her decision.

### **Notice of investigation**

**20.** Before reviewing or investigating a complaint, or before conducting a review or an investigation of a department's or agency's services, the advocate shall inform the deputy minister or the administrative head of the department or agency of the government affected of his or her intention to conduct the review or investigation.

### **Right to information**

**21.** (1) The advocate has the right to information respecting children and youth that is

- (a) in the custody or control of a department or agency of the government; and
- (b) necessary to enable the advocate to perform his or her duties or exercise his or her powers under the Act,

except

- (c) information that could reasonably be expected to reveal the identity of a person who has made a report under section 15 of the *Child, Youth and Family Services Act*; and
- (d) information that is not permitted to be made public by section 26 of the *Adoption of Children Act*.

(2) A person who has custody or control of information to which the advocate is entitled under subsection (1) shall disclose the information to the advocate.

(3) This section applies despite another act or a claim of privilege, except a claim based on a solicitor-client relationship.

### **Defence for certain offences**

**22.** A person is not guilty of an offence against another Act by reason of his or her compliance with a request or requirement of the advocate to furnish information or produce a document, paper or thing, or by reason of answering a question in a review or an investigation conducted by the advocate.

### **Right of entry**

**23.** (1) For the purpose of this Act, the advocate may enter a premises occupied by a department or agency of the government in connection with a review or an investigation within his or her jurisdiction.

(2) Upon entering a premises under subsection (1), the advocate shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises.

### **Notice of proposed steps**

**24.** (1) Where, after conducting a review of a department's or an agency's services, or an investigation, the advocate makes a recommendation, he or she may request the department or agency of the government to whom the recommendation is made to notify him or her within a specified time of the steps that it has taken or proposes to take to give effect to his or her recommendations.

(2) Where, within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the advocate to be adequate and appropriate, the advocate, in his or her discretion, after considering the comments made by or on behalf of the department or agency of the government affected, may report the matter, including a copy of the report containing the recommendations, to the Lieutenant-Governor in Council and may mention the report in the advocate's next annual report to the House of Assembly.

(3) A report made under subsection (2) shall include any comments made by or on behalf of the department or agency of the government upon the opinion or recommendation of the advocate.

### **Report to complainant**

**25.** Where the advocate conducts a review or an investigation on the basis of a complaint received by him or her, he or she shall report to the complainant, in the manner and at the time that he or she considers appropriate, the result of the investigation.

### **Proceedings against advocate prohibited**

**26.** An action does not lie against the advocate or against a person employed under the advocate for anything he or she may do or report or say in the course of the exercise or performance, or intended exercise or performance, of his or her functions and duties under this Act, unless it is shown he or she acted in bad faith.

### **Advocate not to be called as witness**

**27.** The advocate and a person employed under him or her shall not be called to give evidence in a court or in a proceeding of a judicial nature in respect of anything coming

to his or her knowledge in the exercise or performance of his or her functions and duties under this Act.

### **Annual report to House of Assembly**

**28.** The advocate shall report annually to the House of Assembly through the Speaker on the exercise and performance of his or her functions and duties under this Act.

### **Publication of reports**

**29.** (1) In the interest of children and youth or in the public interest, or in the interest of a person, department or agency of the government, the advocate may publish reports relating generally to the exercise and performance of his or her functions and duties under this Act or to a particular case investigated by him or her, whether or not the matters to be dealt with in the report have been the subject of the report made to the House of Assembly under this Act.

(2) The advocate shall not include the name of a child or youth in a report he or she makes under subsection (1) unless he or she has first obtained the consent of the child or youth and his or her parent or guardian.

### **Regulations**

**30.** (1) The Commission of Internal Economy may make regulations

(a) for the guidance of the advocate in the exercise and performance of his or her functions and duties under this Act; and

(b) generally, to give effect to the purpose of this Act.

(2) Except where regulations respecting it are made under subsection (1), the advocate may determine his or her procedure.

### **Offence and penalty**

**31.** A person who

(a) obstructs, hinders, or resists the advocate or another person in the exercise or performance of his or her functions and duties under this Act;

(b) refuses or fails to comply with a lawful requirement of the advocate or another person under this Act; or

(c) makes a false statement to or misleads or attempts to mislead the advocate or another person in the exercise or performance of his or her functions and duties under this Act,

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$1,000 or to imprisonment for a term not exceeding 3 months, or to both.

### **Schedule**

**32.** (1) The Lieutenant-Governor in Council may, by order, add or remove a board, commission, association or other body of persons, whether incorporated or unincorporated, to or from the Schedule.

(2) An order made under subsection (1), is subordinate legislation for the purpose of the *Statutes and Subordinate Legislation Act*.

(3) Notwithstanding subsection (1), a board, commission, association or other body of persons, whether incorporated or unincorporated, shall not be removed from the Schedule unless the removal is recommended by the Commission of Internal Economy.

**Schedule**

Criminal Code Mental Disorder Review Board (section 672.38 *Criminal Code*)

A hospital board or authority incorporated under the *Hospitals Act*

A health and community services board incorporated under the *Health and Community Services Act*

Mental Health Review Board

Newfoundland and Labrador Legal Aid Commission

The Newfoundland & Labrador Housing Corporation

A board, commission or other body added to this Schedule by order of the Lieutenant-Governor in Council

## APPENDIX C

### INTERNATIONAL STANDARDS AND MODELS FOR CHILD ADVOCACY

#### **EUROPEAN NETWORK OF OMBUDSMAN FOR CHILDREN: STANDARDS FOR INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN**

The development of independent statutory institutions to monitor, promote and protect children's human rights should be considered within the context of the broader development of national human rights institutions. On an international level, there has been much organized activity to strengthen government responsibilities toward children. In 1979, the U.N. declared an International Year of the Child, and its Commission on Human Rights embarked upon what became a decade long process of drafting a Convention on the Rights of the Child (CRC). The document, adopted by the UN General Assembly in 1989, is a landmark instrument that recognizes the best interests of the child, the child's developing capacities, and the child's right to human dignity.

To encourage the implementation and compliance of the UN Convention on the Rights of the Child, the European Network of Ombudsman for Children (ENOC), formally established, in 1997, links among independent offices of twelve countries in Europe that promote the human rights of children. Its aims are to encourage the fullest possible implementation of the CRC, to support collective lobbying for children's rights, to share information, approaches and strategies, and to promote the development of effective independent offices for children. At its fourth annual meeting in Brussels in October 2000, ENOC agreed to develop Standards for independent national human rights institutions for children. These standards are based on the Paris Principles (1993), the CRC and the European Convention on Human Rights<sup>11</sup>. The ENOC believes that in order to be effective in monitoring, promoting and protecting the human rights of children, a human rights institution must conform to these Principles. Summarized below

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<sup>11</sup> European Network of Ombudsman for Children Standards for Independent Human Rights Institutions for Children. Retrieved from <http://www.ombudsnet.org/documents/Standards.htm>

are the key implications of the Principles, relating them, where appropriate, to children's human rights in particular.

### **Competence and Responsibilities**

An independent institution set up to monitor, promote and protect the human rights of children must

- be established by legislation;
- have the right to provide and to publicize opinions and recommendations, proposals and reports on its own initiative or at the request of other authorities on any matter concerned with the promotion and protection of children's human rights;
- have as broad a mandate as possible in relation to monitoring, promotion and protection of children's human rights;
- propose and when necessary recommend adoption of new legislation;
- contribute independently to the monitoring and reporting process under the CRC and other relevant instruments;
- assist in formulating and executing programs for the teaching of and research into human rights.

### **Composition, Independence**

An independent institution set up to monitor, promote and protect the human rights of children must

- have adequate funding to enable it to have its own staff and premises in order to be independent of Government. It must not be subject to financial control which might affect its independence;
- must legislatively establish arrangements for appointment of ombudspersons, commissioners and members of a commission, setting out the duration of the mandate and any arrangements for renewal.

## **Methods of Operation**

An independent institution set up to monitor, promote and protect the human rights of children must be able to

- freely consider any questions falling within its competence, whether submitted by Government or taken up on its own initiative;
- hear any person or obtain any information and any documents necessary for assessing situations falling within its competence;
- speak freely to the public, directly or through any media;
- establish working groups and set up local or regional sections to assist in discharging its functions;
- maintain relationships with other bodies responsible for the promotion and protection of human rights including with a broad range of nongovernmental organizations.

## **Hearing and Considering Complaints**

An independent institution that is authorized to hear and consider complaints from individuals and groups may

- inform the complainant of his rights and of available remedies and promote access to them;
- seek an amicable settlement through conciliation, or through binding decision or where necessary, on the basis of confidentiality;
- hear complaints and transmit them to any other competent authority;
- make recommendations, in particular for changes in law, regulations and administrative practice which may have remedied the situation about which there was a complaint.

## **Responding to Complaints from Children and their Representatives**

If an institution includes in its mandate considering and responding to complaints from children, it will need to take into account the particular difficulties for children in making complaints. Children themselves should be involved in the design and review of the complaints procedures and advice and advocacy system. The institution will need to ensure that

- its mandate and powers are appropriately publicized to children and their representatives throughout the jurisdiction in a form and language that they can understand, with special attention to very young children, disabled children, children in difficult circumstances, and in all institutions;
- that children have free and easy access to the institution;
- that there are clear confidentiality policies, explained to children and others before they use the institution's services.

## **Designing Human Rights for Children**

In addition to conforming to the principles listed above, the ENOC believes that the design and development of an institution to promote and protect the rights of children must take full account of the special status of children and the particular difficulties for children in exercising their rights. The institution must have powers in regard to the situation of children in families, in schools and in all other institutions. The institution must have the right to have access to children in all forms of alternative care and all institutions that include children and the power to consider the promotion and protection of children's rights in relation not only to government, but, also to private bodies.

The ENOC further suggests that the institution must include or consist of an identifiable person or persons concerned exclusively with the promotion of children's human rights - a Children's Ombudsman, Children's Rights Commissioner or Children's Rights Commission. This should be a person/people who can bring status and public and political respect to the office. They should have a high public profile so as to enhance the status and visibility of children. The institution will need to ensure awareness of its

existence and mandate amongst children, using appropriate channels including for example schools, other institutions that accommodate children, youth organizations and media used by children. The institution needs to have appropriate, multi-disciplinary staffing dedicated to the promotion and protection of children’s human rights and a minimum budget to enable it to work effectively.

## **Conclusion**

Any independent institution established to monitor, promote and protect the human rights of children should be encouraged to review the status of existing institutions in the light of the Standards reviewed above, and to ensure that the design of new institutions consider

*The UN Nations Handbook on National Human Rights Institutions suggests the following “effectiveness factors” for all independent offices for children:*

- Independence
- Defined jurisdiction and adequate powers
- Accessibility
- Co-operation
- Operational efficiency
- Accountability

## **RHODE ISLAND: OFFICE OF THE CHILD’S ADVOCATE: “A MODEL OMBUDSMAN”**

### **Overview and Historical Perspective**

The Rhode Island legislature was one of the first in the United States to establish an ombudsman-like office in the area of child welfare. The primary purpose of a child welfare ombudsman office is to address the complaints related to government services to children and youth, to provide a system of accountability mechanism, and to protect the interests and legal rights of children and families involved in child welfare and juvenile justice. In 1992, the American Bar Association on Children and Law designated the

Rhode Island Office as a model Ombudsman office. Since 1995, seven American states have developed legal offices for children based on the Rhode Island model<sup>12</sup>.

### **Rights and Powers**

The Rhode Island Office of the Child Advocate (OCA) was established in 1979 under the *Child Advocate Office enactment*. It is a legal office that represents the best interests of individuals involved in the child welfare system as a class, and investigates and resolves complaints against the Department of Children, Youth and Families that may infringe on the rights of State-involved children. Special attention is given to children in care who are not entitled to appointed counsel, primarily voluntary admittees, and to children who, though represented in Family Court, need legal assistance in collateral matters, such as mental health and education. In order to carry out these mandates, the Child Advocate has broad statutory rights and powers. The OCA has the power to “do whatever is necessary to protect the rights of children,” including the right to communicate privately with children in State care at any time, by mail or person; to access information and records regarding child protection and youth justice services; to inspect, copy and or subpoena records held by the clerk of family court, law enforcement, agencies or institutions, public or private, regarding the child placed in or out of state care; the right to subpoena people with whom the children have been placed or from whom the child has received medical or mental health treatment; to raise money in addition to that provided by the state; and to commence a civil action against the state on behalf of a young person; and to take appropriate steps to publicize the office’s purpose and role.

### **Independence**

The Child Advocate is an independent officer of the state appointed by the governor on the recommendation of a multidisciplinary committee for a term of five years. As an independent state agency, the OCA is one of the few ombudsman programs that has the authority to oversee child welfare and juvenile justice out-of-home placements. The Rhode Island OCA maintains a degree of independence and power to act on complaints and investigatory findings. This degree of independence and the power to litigate disputes

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<sup>12</sup>*Beyond the Walls: Improving the conditions of Confinement for Youths In Custody*. Retrieved from <http://ojjdp.ncjrs.org/pubs/walls/contents.html>

on behalf of state children is significant because it has led to more timely procedures and reforms.

### **Functions**

The functions of the Rhode Island OCA are diverse. The primary duty of the OCA is to ensure that children in protective custody or care are afforded their legal, civil, and special rights and that young people in care or custody are informed of these rights. Public and private residential placement facilities and shelters are periodically reviewed by OCA to ensure that the legal rights of children in care are protected and that the placement facilities promote the safety and conform to mandated policy and procedure. The OCA monitors the compliance of the Children's Bill of Rights, which delineates the legal and civil rights of all children in state care. All residential placement facilities and shelters must post a copy of the Children's Bill of Rights. This monitoring of the placement system ensures that young persons involved with the state are protected from further harm. An important aspect of this review process is to interview children for feedback on the quality of the programs and placements and to inform them of their rights. OCA also assesses the quality of State care provided to children by reviewing all investigations of institutional abuse involving residential programs, foster homes, training schools, and daycares. The investigation of institutional abuse for children in daycare involves all children, whether or not the young child is in state care. This close review of formal complaints to child protection authorities continues with appropriate follow-up procedures and contacts necessary to protect children living in out-of-home care.

The OCA investigates and reviews the circumstances of the death of any child who has received services from child protection authorities. The ability to investigate fatalities has statutory authority. The reviews culminate in public reports that focus on specific recommendations for reform. The OCA provides recommendations of systemic improvements and the resolutions of problems in the services related to young persons.

The OCA adopts an active role in legislation and public education processes. For example, the Advocate sits on the General Assembly's Children's Code Commission, which reviews legislation relating to children and routinely testifies in the General Assembly on legislative proposals related to children. The OCA advocates for additional

resources, policy changes, budget enhancements and adoption of creative initiatives to strengthen the system and improve services to children and youth

The OCA fulfills its mandate to educate the public regarding its services by participating in conference presentations, convening public hearings, conducting studies released as public documents, and actively participating on many committees, task forces or coalitions that are concerned about children's issues. The OCA also provides training for persons appointed as the official guardians of young people for the purpose of court proceedings.

To respond to the special needs of children in care who are either victims of crime or who qualify for special education, OCA delivers legal and advocacy services through programs targeted to address these populations. In recent years, the OCA has begun a new program, the Special Education Surrogate Parent Program, which advocates in educational matters for the population served by child protection requiring special education. Regarding child-victims of crime, the OCA is legislatively designated to identify and represent children in State care who may have a viable claim for victim's compensation.

## **SWEDEN: THE CHILDREN'S OMBUDSMAN IN SWEDEN**

### **Overview and Historical Perspective**

Swedish children and young people under the age of 18 have an Ombudsman of their own, the Children's Ombudsman, whose task is to safeguard the rights and interests of children and young people as described in the UN Convention on the Rights of the Child (CRC). Broad issues ranging from commercial sexual exploitation of children to bullying at school are all functions of the Ombudsman. Participation and codetermination for children and young persons (article 12 of the Convention) are among the questions that the Ombudsman has most at heart. The work of the Children's Ombudsman concerning participation for children and young persons is above all aimed at strengthening their own possibilities of having their opinions be taken into consideration in education, in municipal decision making, in clubs and societies and the community at large. The focus of work of the Children's Ombudsman is always from a child perspective.

When the Office was first established in 1993, debate arose as to whether the Children's Ombudsman should be equipped with statutory powers of intervention in the

handling of individual cases or whether to make the Ombudsman an independent spokesman for children and young person in a general sense, concentrating mainly on information and the molding of public opinion<sup>13</sup>. Since Sweden already has in place other authorities who intervene for the protection and support of individual children and youngsters, the Children's Ombudsman considers children and young persons as a group and induces the general public, authorities, companies and organizations to make provisions for children's rights and interests in every conceivable connection. This does not mean that individual cases are ignored; often it is the individual cases that bring the attention of the Children's Ombudsman to unsatisfactory conditions and the absence of a child's perspective in a particular field. Although it is a general role for all children, the Children's Ombudsman continues to devote special attention to issues relating to disadvantaged children.

### **Rights and Powers**

The Children's Ombudsman was established as an Act of Parliament in 1993. It is the only Ombudsman in Sweden with no form of legal powers despite international and national experiences that have shown that such powers can improve the efficacy of the work of the Ombudsman. Under the *Children's Ombudsman Act*, the work of the Children's Ombudsman should be general in nature, and include information and opinion forming activities on matters concerning the rights and needs of children and young people. The Children's Ombudsman does not focus on individual cases and is the only Ombudsman in Sweden that does not handle individual cases.

The Children's Ombudsman can request from individual government agencies and municipal and country authorities information about what they are doing in their activities to ensure compliance with CRC. Related to this, the Ombudsman can empower to summon government agencies and municipal and county authorities for discussion.

### **Independence**

The Children's Ombudsman is independent from the government and acts as a non-political body. The Ombudsman is appointed by the Swedish government for a term of

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<sup>13</sup> *Ombudsman in Sweden*. Retrieved from <http://www.ombudsnet.org/Ombudsmen/Sweden/SwedenOmb.htm>, March 2004

six years. Apart from the legislation establishing an Ombudsman for Children and the standing instructions for the Office, the Ombudsman is free to set up his or her agenda, give statements and also criticize government or members of Parliament. The decisions on the work of the Ombudsman are passed through parliament instead of government.

Although the definition of the Office of Child in Sweden is that it independent of government, the concept of independence is inevitably relative not absolute. Parliament or government generally provides most funding and there is always accountability. Thus, the Children's Ombudsman has a dual, and often conflicting role as the representative of children and young people at the same time as it is a public agency accountable to the government.

### **Functions**

The role and functions of the Children's Ombudsman are broad and diverse and essentially refer to all issues concerning children and young persons. Generally, the Ombudsman ensures that the rights and needs of children and young people are provided for. The Ombudsman represents the interests of children and young people, safeguards their rights, promotes their welfare and ensures their right to equal treatment. If this is not the case, the Ombudsman proposes measures to the government that highlights society's responsibility towards young people. The Children's Ombudsman is responsible for disseminating knowledge of the rights of children and young persons and increases all children and young people's knowledge of their rights.

The function of the Ombudsman is founded on the United Nations CRC. The Ombudsman ensures the implementation of the CRC by monitoring compliance with provisions of CRC, indicating shortcomings and formulating proposals for amendments. The Ombudsman ensures that laws and other statutory instruments as well as their application fulfill the undertakings made by Sweden under the Convention. As soon as an issue is regulated under the Convention, it comes within the ambit of the Children's Ombudsman. In some cases, issues falling outside the scope of the Convention may also be addressed. To facilitate compliance with the Convention, the Children's Ombudsman compiles in-service training programs concerning the Convention and publishes reports

on its interpretation and handbooks on ways in which the Convention can be implemented.

The Ombudsman participates in public debate, promotes public interest regarding key issues and influences the attitudes of decision makers and the public. A primary role of the Ombudsman is to be the voice of young people in society, to assert their point of view and insist respect for their human rights. In order to find out the views of children and young people, the Ombudsman spends time in schools and clubs, and maintains regular contact with young people. Opinions and advice from children and young people constitute an important factor in the determination of priorities in the work of the Office. The Office maintains a website that not only serves as a means of communicating best practices for the implementation of the Convention, but, also has an internet channel for dialogue with children and young persons where the Ombudsman can have direct dialogue with children. Here, the Ombudsman can canvass children's viewpoints on various topics, ensuring that children become involved in the process of implementing the CRC. The website is also used to pose questions to children with the ultimate goal of being connected to every school in Sweden with an internet. Children can contact the Office by letter, phone, or the website. The Office also has in place several children's councils and one youth council. The function of these committees is to provide a forum for a selected group of young people to provide advice on topics which the Office should address.

Each year, the Office submits a report to government addressing the situation of children and young people in Sweden. The report contains viewpoints and proposals, which the government should consider and serves as a platform for important discussions between the Children's Ombudsman and the government.

## **NORWAY: THE CHILDREN'S OMBUDSMAN**

### **Overview and Historical Perspective**

Norway was the first country (1981) in the world to establish an ombudsman working for the benefit of children. The primary task of the Norwegian Children's Ombudsman is to

promote the interests of all Norwegian children and youth. The Ombudsman works by recommending legal or policy changes to government, using the media to promote awareness of children's rights and needs, distributing information on children's rights, investigates and takes up individual cases where a complaint has been made and raising issues of principal which arise from them<sup>14</sup>. In cases that are dealt with, the Children's Ombudsman mainly exerts influence through criticism and statements of the parties involved, with the added possibility of making these statements public.

### **Rights and Power**

The Norwegian Office of the Ombudsman is established by legislation and therefore has statutory powers and a recognized place and responsibility in the government bureaucracy. The Ombudsman is appointed by the King of Norway for a period of four years and for no more than eight years, or two terms. The Ombudsman, or the advisory council that assists the Ombudsman does not have any executive powers, but the Ombudsman has unrestricted access to all public and private institutions for children. Similarly, the Ombudsman has the right to be provided with information, to study protocols, etc., without being prevented by consideration. The Act of establishing the office as an autonomous body is short; the statutory duty of the Ombudsman is to "promote the best interests of children vis-à-vis public and private authorities". The Office of the Ombudsman must submit an annual report to the Ministry about its activities for the year that can be made available to the public.

### **Independence**

The Office of the Ombudsman is independent of other government departments and it is not confined to any particular sector of government. The King lays down general instructions for organization and procedures for the Ombudsman, beyond this, the Ombudsman carries out his/her function independently.

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<sup>14</sup> Norway: *The Ombudsman for Children*. Retrieved from <http://www.ombudsnet.org/Ombudsmen/Norway/norway.htm>, 2004

## Functions

The major focus area of the Norwegian Ombudsman is to strive for equality in the environments where young people live their lives. Norway ratified the UN CRC in 1991, and a major function of the Ombudsman is to ensure the implementation of the CRC.

The Ombudsman for children is more than just a public figure with statutory powers. The Office aspires to strengthen its partnership with children and youth, continuing to improve the various conditions affecting all children in Norway.

Influencing and being part of policy making is essential for the Ombudsman. The Ombudsman works to improve the national and international legislation affecting children's welfare. In particular, the Children's Ombudsman ensures that legislation related to the protection of children's interest is observed and proposes measures that can strengthen children's safety and protection under law or prevent conflicts between children and society<sup>15</sup>. The Ombudsman also reviews children's access to and the effectiveness of advocacy and complaint systems, including institutions, schools and courts.

Because the Office works hard to make children be seen, heard, and valued, all children in Norway are looked upon as competent individuals. The Office employs a wide range of communication tools to gather information about the lives of children and youth, but, more importantly, to provide a means for children and youth to be able to express themselves in confidence and in great detail. Communication tools, such as the Children's Powerline and the Internet Parliament are seen as fundamental to change and improve legislation concerning children<sup>16</sup>. The voices of children and youth are heard through mini-referendums in schools and on the Internet on matters concerning themselves. This valuable information is used in the Ombudsman's work, either implemented in public hearings, or used as facts in public debates.

The Children's Ombudsman highlights the right of children through distributing information materials, attending school meetings, and through partnerships with broadcasting and media organizations. Through information, lectures, control and

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<sup>15</sup> Summary of the Committee's conclusions from the Norwegian Official. Report The Commissioner for Children, and Childhood in Norway (NOU). Retrieved from <http://www.ombudsnet.org/Ombudsmen/Norway/norway.htm>

<sup>16</sup> Norway National Update 2001. Retrieved from [http://www.ombudsnet.org/Ombudsmen/Norway/Activities\\_00\\_01.htm](http://www.ombudsnet.org/Ombudsmen/Norway/Activities_00_01.htm)

inspection, the Children's Ombudsman has promoted the visibility and welfare of children in Norway.

The Ombudsman is also involved in distributing grants to innovative ideas to improve the work of student school councils, continuing to encourage children and youth to partake in political decisions and empowering them to use their voices effectively.

## **NEW ZEALAND: A CHILDREN'S COMMISSIONER**

### **Overview and Historical Perspective**

New Zealand made one of the first appointments of a Child Commissioner in 1989. The Office of the Commissioner for Children is unique in New Zealand. The Commissioner's functions are a combination of special functions related to monitoring the administration under the *Children, Young Persons and Their Families Act* and a more general advocacy in relation to children's welfare and interests. The Office was established to monitor and review policy and practice related to children and to promote the welfare of children and young people under the age of 18 and to ensure that their rights are recognized.

The Office has become well known as an independent voice for children, including monitoring government and other organizations that work with children and young people, through investigations, research, submissions and advocacy. These have included child abuse, the rights of young people in residential care, school boarding hostels, police custody, suspensions and expulsions from school, children appearing as witnesses in court, and those whose parents are imprisoned<sup>17</sup>. The Office has succeeded in stimulating public debate on the subject of children's living conditions, lack of sufficient care, and the children's own reaction, thus giving these issues a more prominent place on the political agenda.

### **Powers and Rights**

The Office of the Children's Commissioner has statutory responsibilities that include the investigating and monitoring of child protection and to ensure that its procedures and practices meet the duties to children and young people. The Office also monitors the

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<sup>17</sup> *The Officer of the Commissioner for Children in New Zealand*. Retrieved from <http://www.occ.org.nz/aboutus/>

provision of youth justice services. The Commissioner can inquire into any matter affecting children and young people in any service or organization. The Commissioner has special responsibilities to investigate matters of child abuse and neglect, youth offending and the actions of the Department of Child, Youth and Family Services.

## **Functions**

The Office has a broad range of functions that are aimed at promoting and ensuring the welfare of children and young people. The UN CRC is used as the basis of their work and a significant function of the Children's Commissioner is to ensure the implementation of the CRC.

The functions of the Office are a mix of special functions related to care and protection system and more general ombudsman functions. Specifically, the roles and function of the Children's Commissioner include the following: investigating any decision or recommendation made, or any act done or omitted under the *Children, Young Persons and Their Families Act* in respect of any child or young person; monitors and assess the policies and practices of child protection services and of any other person, or body or organization exercising or performing functions duty or power related to children services; undertakes and promotes research into any matter relating to the welfare of children and young persons; increase public awareness of matters relating to the welfare of children and young persons; and advisory on policy legislative reform and practice<sup>18</sup>.

The Children's Commissioner ensures that services related to children and young people protect and promote children's rights, welfare and best interests of children while ensuring that their voices are heard in decisions made about them and that children have access to child-friendly complaint mechanisms.

The Children's Commissioner maintains regular contact with children's rights institutions and various child-centred organizations both nationally and internationally. By establishing these contacts, the Office of the Commissioner for Children in New Zealand has benefited from the exchange of information on policy and practice related to

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<sup>18</sup> *The Officer of the Commissioner for Children in New Zealand*. Retrieved from <http://www.occ.org.nz/aboutus/>

ensuring the rights of children. This two-way exchange of information may increase the quality of advice able to be offered by the Office.

## **THE WORK OF OMBUDSMAN FOR CHILDREN THROUGHOUT THE WORLD**

### **Cross-Section of Practices International Models of Child Advocacy: Sweden and Norway**

The international models of child advocacy reviewed in this report have been identified as “model” systems of child advocacy and other countries, such as Israel and Belgium, have adopted similar practices based on the policy and practice of child advocacy developed by Sweden and Norway<sup>19</sup>. To be influential, the Children's Offices in both Sweden and Norway have found the need to have a close, but not a dependent relationship with the government because there have been times when an office will make recommendations for legislative changes with which the government may in fact disagree, or find unpalatable. Both Sweden and Norway's Children Offices are independent from other institutions which allow them to criticize any administrative level, any group, organization, or person disregarding the interests of children, regardless of political or other considerations. This feature allows the Offices to determine their own processes, allowing them to deal with issues and complaints in the way they consider most efficient.

On an ongoing basis, both offices in Sweden and Norway review and report on existing laws, practices, and policies which relate to children and young people. The extent to which the Children's Ombudsman in both Sweden and Norway does public outreach through publicized twenty-four hour hotlines for children callers, websites, posters, brochures, newspaper columns, radio or television appearances, coloring books and other items that are used by children that include information about the ombudsman program and children's rights in general is extraordinary compared to any Canadian and/or United States office of child advocacy.

In general, international models of child advocacy are involved to a greater extent with children's code reform, child safety, child labor, child privacy, police misconduct

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<sup>19</sup> The European Network of Ombudsmen for Children (ENOC). Retrieved from <http://www.ombudsnet.org/history.htm>

related to children, and professional education than are child advocacy models developed in the US or Canada. The major advocacy tool with regards to children's advocacy is the United Nations Convention on the Rights of the Child. This Convention defines children's rights, entitlements and protections. The Ombudsman lectures in public schools and works closely with children themselves to make their collective voices heard before government legislative and planning bodies, including forming children's councils. The Ombudsman is heavily involved with education about parental authority and children's rights, and parents are much more likely to contact the ombudsman programs for advice and information about parent-child conflict and the use of physical punishment.

The offices of Sweden and Norway have both been described as popular and successful. Independent evaluations conducted in Sweden and Norway have shown that the Ombudsman is well-known, attracts widespread popularity and results in positive changes for children<sup>20</sup>. Table 1 summarizes some of the positive outcomes identified.

Table 1

*Positive outcomes identified in Norway and Sweden*

***Reviews and evaluations of children's rights institutions in Norway and Sweden have identified positive outcomes for children and young people, government bodies and society in general. These include the following benefits:***

- developing a significant role in issues relating to children, chiefly through information and opinion molding activities;
- bringing momentum to the task of implementing the United Nations Convention on the Rights of the Child;
- making visible the overall living conditions of children and young people and ensuring a comprehensive picture of their lives is created;
- effectively upholding children's rights by securing a position in which a Children's Commissioner or Ombudsperson acts as a children's representative and refers to children's own views and experience.

<sup>20</sup> Education Culture and Sport Committee 2nd Report 2002 Report on Inquiry into the Need for a Children's Commissioner in Scotland Retrieved from [http://www.scottish.parliament.uk/S1/official\\_report/cttee/educ-02/edr02-02-05.htm](http://www.scottish.parliament.uk/S1/official_report/cttee/educ-02/edr02-02-05.htm)

## **US MODELS OF CHILD ADVOCACY**

The Office of the Child Advocate in Rhode Island has been described as a model ombudsman office. It has achieved success in ensuring the rights of children and young people. Several states have adopted the policies and practice of the Rhode Island Office in their own offices of child advocacy with similar success.

Unlike child advocate offices internationally, publicity and public relations is a minor part of the work of US based Ombudsman. Most programs are created by an act of the state legislature and the programs depend almost entirely on state legislative appropriations or the allocations of funds from a state government agency. Unlike Offices internationally, education to parents about parental authority and children's rights are seldom addressed in US models and as such, parents are less likely to initiate contact with ombudsman programs.

## APPENDIX D

### Interview Protocol for Provincial Child Advocacy Offices

Paul Whitehead, PhD, Alan W. Leschied, PhD, C. Psych, Debbie Chiodo, MA  
and Nicholas Bala, LLM

#### Descriptive Information

1. Which office are you part of \_\_\_\_\_
2. Which model of child advocacy does your office most closely resemble
  - a. Independent child advocacy office
  - b. Part of Ombudsperson Office
  - c. Part of Human Rights Office
  - d. Child complaints investigation
  - e. Other (specify) \_\_\_\_\_
3. What are the advantages/disadvantages of being part of larger office with broader mandate (e. g., Quebec / Nova Scotia)?
4. Do you view your office as limited to “advocacy” or do you carry out investigations and / or try to mediate disputes?

#### Legislation Related issues

5. What are features of your legislative mandate that allow your office to be as effective as it is?
6. What are the impediments in your legislative mandate that would need to change to allow you to improve your delivery of service?

#### Advice to Children and their Families

7. How does your office provide information and advice to young people and their families regarding government services?
8. How does your office intervene in the lives of children and their families in extraordinary situations?
9. How does your office investigate complaints regarding child welfare services?

10. How does your office investigate complaints regarding young offenders' services?
11. How does your office monitor the conditions of confinement for young person in young offender facilities?
12. How does your office represent the rights of children in care?
13. How does your office monitor the delivery of government services to children and their families?

#### **Interface with Government**

14. How does your office go about advising government regarding the types and nature of services that government should provide to young people and their families?
15. How does your office advise the responsible minister regarding children's programs and child policies?

#### **Public Advocacy**

- 16a. Is your office able to speak publicly about issues regarding government services to children and their families?
- 16b. If yes, how is this accomplished?
17. How does your office bring its services to the attention of children, youth and their families?

#### **Research**

18. Does your office conduct or commission research regarding children's services, policies etc.?

#### **Additional Issues**

19. What is the accountability mechanism, for the function of your office?
20. Do you provide an annual report?
21. If yes to above, do you find it valuable?

**22. Are you concerned about the independence of your office and the potential for interference? What safeguards do you have in place to ensure independence?**

**Future Developments**

**23. What future areas for developing child advocacy is your office identifying?**

**24. What changes to your current office function are you anticipating?**

**25. What changes to your current legislation would you see needing to work towards to effect the developments you are hoping to achieve?**

## APPENDIX E

### SALARIES AND BUDGETS OF CHILD AND YOUTH ADVOCACY OFFICES IN CANADA: 2004

PROVINCE	Chief Advocate	Advocacy Officer	Budget (Program & Admin)	Mandate
Ontario	Chief Advocate Classification: AM21 Salary: \$ 84,872 (current) Range: \$66,197 - \$ 86,867	Advocacy Officers (10) Classification: AM18 Salary Range: \$54,937- 68,474	\$1,006,400	Child & Family Services Act
British Columbia	Child & Youth Officer (1) Salary: up to \$182,000	Associate Child & Youth Officers (13) Salary \$69,525	\$ 2.26 million	Office for Children and Youth Act
Manitoba	1 Children's Advocate Salary Range: \$ 71,605 - \$ 85,563  Deputy Children's Advocate Salary: \$54,678 - \$ 69,506	Advocacy Officers (3) Salary Range: \$46,148 - \$ 62,640  Advocacy Assessment Officer (Intake) (1) Salary Range: \$ 41,439 - \$ 57,477	\$ 636,400	The Child & Family Services Act
Saskatchewan	Children's Advocate (LG6) Salary: \$128,000  Deputy Children's Advocate (ML8) (1) Salary: \$ 59,004 - \$ 76,692	Advocacy Officers (PL6) (5,5) Salary Range: \$ 54,000 - \$ 70,000	\$ 1,207,000	The Ombudsman and Children's Advocate Act
Nova Scotia	Children's Ombudsman Classification: MCP 22 Salary: \$61,989 (current)	Program Administration Officers (3)  Salary Range \$40,512 - \$43,869	\$ 802,000	Ombudsman Act
Quebec	Chief Advocate (Vice- President) Annual Salary: \$ 120,000	Line Advocates Salary \$34,500 to \$64,400	\$ 4.3 million	Youth Protection Act
Newfoundland & Labrador	Deputy Child & Youth Advocate \$93,000 (current)	Advocacy Assessment Officer HL24 - \$ 56,769 - \$73,800 Advocacy Education Officer HL23 - \$53, 782 - \$ 69,916 Advocacy Investigative Officer HL23 - \$53,782 - \$ 69,916	\$ 241,500 (Operating Budget)	Child & Youth Advocate Act
Alberta	Children's Advocate Salary Range: 83,736 - \$110,028	Advocacy Officers (13) Salary Range: \$ 62,400 - \$76,164 Community Advocates (2) Salary:	\$ 2,000,000 (Operating costs)	Child Welfare Act

September 2004 Source: OCSFA

## APPENDIX F

### STAFF COMPLEMENTS OF CHILD AND YOUTH ADVOCACY OFFICES IN CANADA: 2003

<b>ALBERTA</b>
A total of 22 staff : the provincial Children's Advocate, 2 Community Advocacy Facilitators, 13 Advocates, 1 Manager of Program Resources, 4 Administrative Support staff, 1 Systems Administrator.
<b>BRITISH COLUMBIA</b>
The Office for Children and Youth has 21 full-time-equivalent staff, and currently hosts 2 youth staff involved in the Right Way project.
<b>MANITOBA</b>
A total of 7 staff : 1 Children's Advocate, 1 Deputy Children's Advocate, 2 Advocacy Officers, 1 Advocate Assessment Officer, 1 Office Manager and 1 Support Staff.
<b>NEWFOUNDLAND AND LABRADOR</b>
The Office has a total of 7 staff including: the Child and Youth Advocate; a Deputy Child and Youth Advocate; 1 Advocacy Assessment Officer; 1 Advocacy Education Officer (also responsible for advocacy services); 1 Manager, Human Resources & Administration; 1 Executive Secretary; 1 Administrative Assistant.
<b>NOVA SCOTIA</b>
A total of 4 staff consisting of 3 Field Officers and 1 Secretary. To be reviewed upon the appointment of a new Ombudsman expected in the Fall of 2003.
<b>ONTARIO</b>
A total of 17 staff consisting of 1 Chief Advocate, 10 Advocates, 1 Executive Assistant, 2 Support Staff and 1 Youth Coordinator, 1 Right Way Project Coordinator, and 1 Systems Officer.
<b>QUEBEC</b>
A total of 133 staff. It is estimated that 30% of these human resources is devoted to child and youth mandate only.

## **SASKATCHEWAN**

Not including the Children's Advocate, the Office employees 11.85 (FTE) permanent and permanent part-time positions: 1 Deputy Children's Advocate, 1 Director of Advocacy Services, 5 Advocates, 1 Advocate Assistants, 1 Director of Communications, 1 Human Resources and Financial Administrator, 1 Executive Administrative Assistant and 2 Administrative Assistants.

The Office does not utilize volunteers.

The Office assists in facilitating a Provincial Youth Delegation of 10 young people from throughout the province. A contract Youth Coordinator position was added in 1999 to facilitate the work of the Delegation.

Some administrative functions are shared with the Provincial Ombudsman: legal counsel, some office administration, computer assistance, and some reception duties.

Source: Adapted from Canadian Council of Provincial Child and Youth Advocates, *Children's Advocates Services in Canada: 2003*.