

**Provincial Advocate**  
*for Children & Youth*

**L'intervenant provincial**  
*en faveur des enfants & des jeunes*

Office of the Provincial Advocate  
for Children and Youth

Submission to  
Ministry of Children and Youth Services on  
2014 Review of the *Child and Family Services Act*



## Table of Contents

PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH .....	4
Youth Guide The Work Of The Office And Submission .....	4
Movement Towards Fundamental Change .....	5
PART I – WE ARE VULNERABLE .....	6
A. Incorporating Convention Rights.....	6
B. Access to Advocacy: Obligation to Notify All Children Seeking and Receiving Services under the CFSA of Right to Contact Advocate’s Office .....	7
C. Safeguards.....	9
PART II – WE ARE ISOLATED .....	9
A. Meaningful Participation of Youth .....	9
B. Enhancing Our Understanding of Family .....	10
C. Access to Siblings .....	10
D. Stability in the School System .....	12
PART III – NO ONE IS REALLY THERE FOR US.....	12
PART IV – CARE IS UNPREDICTABLE.....	13
A. Practice Issues .....	14
B. Setting Expectations: Enhancing the Rights of Children and Youth in Care .....	15
C. Outcomes.....	16
D. Complaint System .....	17
(i) Internal Complaints Procedure .....	17
(ii) Access to Residential Placement Advisory Committee .....	19
(iii) Access to Child and Family Services Review Board .....	20
E. Oversight, Accountability and Governance .....	20
(i) Audits of Child Welfare Files .....	21
(ii) Access to Information .....	23
(iii) Whistleblower Protection .....	25

(iv) Governance.....	25
PART V – CARE ENDS & WE STRUGGLE .....	26
Extend Age of Protection on a Voluntary Basis .....	29
Equal access to resources .....	29
Maintaining the option of social assistance for those who choose not to come into care .....	30
PART VI – WE KEEP LOSING WHO WE ARE: FIRST NATIONS VOICES .....	30
PART VII – CONCLUSION.....	31
SUMMARY OF RECOMMENDATIONS .....	31
PART I – WE ARE VULNERABLE .....	31
A. Incorporating Convention Rights .....	31
B. Access to Advocacy: Obligation to Notify All Children Seeking and Receiving Services under the CFSA of Right to Contact Advocate’s Office .....	31
PART II – WE ARE ISOLATED.....	32
A. Meaningful Participation of Youth.....	32
B. Enhancing Our Understanding of Family.....	32
C. Access to Siblings.....	32
D. Stability in the School System.....	32
PART III – NO ONE IS REALLY THERE FOR US .....	33
PART IV – CARE IS UNPREDICTABLE .....	33
A. Practice Issues.....	33
B. Setting Expectations: Enhancing the Rights of Children and Youth in Care .....	33
C. Outcomes .....	34
E. Oversight, Accountability and Governance.....	36
PART V – CARE ENDS & WE STRUGGLE.....	37
Extend Age of Protection on a Voluntary Basis .....	37
PART VI – WE KEEP LOSING WHO WE ARE: FIRST NATIONS VOICES.....	38

## PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

The Provincial Advocate for Children and Youth is an independent officer of the Legislature of Ontario. Established in 2007 under the *Provincial Advocate for Children and Youth Act*, the Office of the Provincial Advocate for Children and Youth (Advocate's Office) has a mandate to provide an independent voice for children and youth, including First Nations children and youth and children with special needs by partnering with them to bring issues forward.

In broad strokes, those who fall within the mandate of the Advocate's Office encompass children and youth who are seeking or receiving services from the children's services sector. These services include child welfare, youth justice, children's mental health, developmental services, and children's treatment centres. The jurisdiction of the Provincial Advocate also extends to the pupils of the provincial and demonstration residential schools for the deaf, blind, deaf-blind and severely learning disabled; those in court holding cells and transportation to and from court holding cells; First Nations children and youth; and children and youth with special needs.

Under Section 16 of the Act, the Advocate's powers include the ability to receive and respond to complaints, conduct reviews, represent the views of children and youth to service providers, informally resolve complaints, make reports, provide advice, educate and provide advocacy. Advocacy does not include the authority to conduct investigations or provide legal advice or legal representation to children and youth.

Bill 8 (presently unproclaimed) expands the powers of the Provincial Advocate to include conducting investigations, including systemic investigations, relating to a child or group of children in respect of a Children's Aid Society service, or services provided by a residential licensee where a Children's Aid Society is the placing agency.

## YOUTH GUIDE THE WORK OF THE OFFICE AND SUBMISSION

The Advocate's Office is mandated to, and strives to, put young people at the centre of its work and elevate their voices by partnering with them. We believe that the most powerful voice for young people is their own. We continually seek opportunities to include youth in all aspects of the office's work. Young people possess the wisdom of their lived experience which can make meaningful change. Their voices, however, are often silenced rendering them invisible. Young people often do not have the opportunity to be heard and our office is mandated to elevate their voices through partnership; partnerships occur in our individual, systemic and community development advocacy.

We understand the systems that affect the young people in our mandate through the thousands of young people who have contacted our office for assistance, our community development work and the work of young people in our many advocacy projects. This submission is informed by all of the young people who have been connected to the work of the Advocate's Office, including in project areas such as:

- *Our VOICE Our TURN*  
(pdf) <http://provincialadvocate.on.ca/main/en/hearings/pages/report.html>
- *Feathers of Hope*  
(pdf) <http://digital.provincialadvocate.on.ca/i/259048>
- *You Are Not Alone*  
(pdf) <http://provincialadvocate.on.ca/youarenotalone/en/you-are-not-alone.html>
- *I Do Care* project  
(pdf) [http://provincialadvocate.on.ca/documents/en/IDC\\_SurvivalGuide\\_EN.pdf](http://provincialadvocate.on.ca/documents/en/IDC_SurvivalGuide_EN.pdf)
- *I Have Something to Say*  
<http://provincialadvocate.on.ca/main/en/ihsts/>

## MOVEMENT TOWARDS FUNDAMENTAL CHANGE

The Minister of Children and Youth Services wrote to stakeholders seeking input as of of the review of the *Child and Family Services Act*.<sup>1</sup> In her letter the Minister identified a number of areas for consideration:

1. Improving outcomes for children and youth, with specific focus on:
  - Supporting older youth who are in need of protection
  - Residential services and licensing
  - Information sharing
  - Permanency (seeking to provide permanent homes for children in care), including adoption
  - Supporting Aboriginal children and youth
2. Modernizing and clarifying the language of the Act

We address those areas within this submission and make a number of recommendations with respect to them. We also outline a number of additional issues that the review should address in order to meet the needs, and further the rights and interests of children and youth affected by the CFSA. Our recommendations are based on the belief that there is a need for fundamental change in Ontario's child welfare system.

The Youth Leaving Care Hearings, held in November, 2011, and the resulting report, *My REAL Life Book*, released May 14, 2012, poignantly delineated the challenges faced by young people in and from care as they make the transition to adulthood. The Hearings were a partnership between children and youth "in and from care" and the Advocate's Office. Hundreds of young people from across the province attended the Hearings and many also made submissions.

---

<sup>1</sup> Ministry of Children and Youth Services, *Review of the Child and Family Services Act - Discussion Guide, Fall 2014* (Ontario: MCYS, 2014) [www.children.gov.on.ca/htdocs/English/documents/about/CFSADiscussionDocument-2014.pdf](http://www.children.gov.on.ca/htdocs/English/documents/about/CFSADiscussionDocument-2014.pdf).

*My REAL Life Book* identified seven themes in its report on the Youth Leaving Care Hearings. This submission is organized around those themes identified by young people in the report:<sup>2</sup>

- We are vulnerable
- We are isolated
- We are left out of our lives
- No one is really there for us
- Care is unpredictable
- Care ends and we struggle
- We keep losing who we are: First Nations Voices at the Hearings

*My REAL Life Book's* priority recommendation was for the province of Ontario to recognize that the current child welfare system needed to fundamentally change to better prepare young people in care to succeed. The report called upon the province to work with young people in and from care and other stakeholders to complete an "action plan for fundamental change" by November, 2012, that would address the report's concerns and goals. The province struck the "Youth Leaving Care Working Group", comprised of youth in and from care and other stakeholders, to complete the action plan. In January, 2013, the Youth Leaving Care Working Group released its final report, the *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group*<sup>3</sup> (*The Blueprint*).

In this submission, the Advocate's Office will call for many recommendations from these reports to be embedded in the CFSA through legislative change.

## PART I – WE ARE VULNERABLE

### A. INCORPORATING CONVENTION RIGHTS

Canada is a signatory to the United Nations Convention on the Rights of the Child (the Convention). The Convention came into force and was ratified in 1991. Canada's commitment to those rights is expressly reflected in the *Youth Criminal Justice Act*, S.C. 2002, c.1, which provides in its preamble:

*WHEREAS* Canada is a party to the *United Nations Convention on the Rights of the Child* and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms.

---

<sup>2</sup> Office of the Provincial Advocate for Children and Youth, *My REAL Life Book* (Ontario: Office of the Provincial Advocate for Children and Youth, 2012).

<sup>3</sup> Ministry of Children and Youth Services, *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group* [The Blueprint] (Ontario: MCYS, 2013).

The Province has expressed through the *Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c. 9, as amended, that the Convention rights are to be applied in the work of the Advocate's Office. Section 2.(3)1 provides:

In interpreting and applying this Act, regard shall be had to the following principles:

1. The principles expressed in the United Nations Convention on the Rights of the Child.

Similarly, *The Blueprint* connected its recommendations to Convention rights.<sup>4</sup> In our view, commitment to the Convention rights of children and youth in care and connected to care, should be expressed in the CFSA. Our province's commitment to Convention rights is presently not expressly reflected in the CFSA. This is important because Convention rights are of little effect unless they are incorporated into domestic law.

We, therefore, recommend that the purposes reflect our commitment to the rights of children and youth by amending Section 1.(2)3 of the CFSA to add the words "and delivered" and to add the following (throughout this document recommended amendments that are additions are in **blue**, those we recommend to be deleted are in red with **strikethrough**):

[to recognize that children's services should be provided **and delivered** in a manner] ...

v. that reflects the principles expressed in the United Nations Convention on the Rights of the Child.

## **B. ACCESS TO ADVOCACY: OBLIGATION TO NOTIFY ALL CHILDREN SEEKING AND RECEIVING SERVICES UNDER THE CFSA OF RIGHT TO CONTACT ADVOCATE'S OFFICE**

The Advocate's Office is mandated to provide advocacy services to **all children and youth** who are seeking or receiving services under the CFSA.<sup>5</sup> As a result, all children and youth seeking or receiving services under the CFSA are entitled to advocacy services.

At present, the rights of children in care, including the right to be informed of the existence of the Office of the Provincial Advocate for Children and Youth, are set out in Part V of the CFSA. The rights attach to those children and youth defined in Section 99 of the CFSA:

"child in care" means a child or young person who is receiving residential services from a service provider and includes,

- (a) a child who is in the care of a foster parent, and

---

<sup>4</sup> Ibid., 27.

<sup>5</sup> Ontario, *Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c.9, Section 15(1)(a) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_07p09\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_07p09_e.htm).

(b) a young person who is,

(i) detained in a place of temporary detention under the federal Act,

(ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with Section 88 of the federal Act or otherwise, or

(iii) held in a place of open custody under Section 95 of Part IV [Youth Justice].<sup>6</sup>

Section 108.(c) of the CFSA provides that a child in care (within the meaning of Part V) has a right to be informed of the existence of the Advocate's Office, in language suitable for the child's level of understanding.

We know that much of the work of our Children's Aid Societies and our youth justice systems is done outside of residential care. For example, a substantial portion of our Children's Aid Societies' work is delivered through family service. Similarly, children and youth connect with our youth justice system through the probation system where probation officers function as case managers. In addition, children and youth receiving mental health services or special needs services under the Act also receive service outside of CAS care. These children and youth are entitled to advocacy services yet there is no obligation on service providers to inform those children and youth about the existence of the Advocate's Office. Young people continue to tell the Advocate's Office that they would have benefited from contact with the Advocate's Office before coming into residential care.

We, therefore, recommend that the CFSA be amended to provide that all children and youth seeking or receiving services within the meaning of the CFSA have the right to be informed of the existence of the Advocate's Office.

We further recommend that all services funded under the CFSA should be required to prominently display an Advocate's Office poster where children, youth and their families can see it. They should have the right to private contact with the Advocate's Office, should they wish, by telephone or in person.

As an additional safeguard, for young people who may not feel safe contacting the Advocate's Office from group homes, foster homes or other residential services, all public and separate schools (elementary and secondary) should be required to display the Advocate's Office's poster. Students should also be permitted to contact the Advocate's Office in private.

---

<sup>6</sup> Ontario, *Child and Family Services Act*, R.S.O. 1990, Chapter C.11 Section 99, [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90c11\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm).

## C. SAFEGUARDS

In most cases, it is difficult for children and youth to champion their own interests, especially when they are in the care of the state or receiving services from the government. When children do not have the ongoing protection of their parents, additional safeguards are necessary.<sup>7</sup> For this reason, the CFSA contains a number of formal mechanisms to protect the safety, rights, and best interests of those in care.

We propose enhancing the safeguards intended to protect children and youth and strengthening the means by which they can complain. By enhancing these safeguards, we can reduce the vulnerability of our young people. This will be addressed further in *Part IV – Care is Unpredictable* of this submission (page 13).

## PART II – WE ARE ISOLATED

### A. MEANINGFUL PARTICIPATION OF YOUTH

Both Article 3 of the Convention and Section 107 of the CFSA, articulate the right of young people to be heard in matters affecting them. Despite these rights, and the best intentions of staff, we continue to hear from young people leaving our systems of care that they did not have this experience.

Organizations and even institutions may believe that they “involve children” in decisions that affect them. Yet young people tell us that they felt isolated in care and wished they could have been heard, and the care system could have responded to their needs, long before they had to resort to contacting our Office.

Children’s services should be obligated to “meaningfully” involve children and youth. This should range from responsiveness to complaints to the manner in which a plan of care is held — and everything in between. Children and youth should be involved in policy and practice development and of course in the actual service they receive.

It is for these reasons we recommend Section 1.(2)3.iv. of the CFSA be amended that:

[...services should be provided **and delivered** in a manner that]

iv. includes the **meaningful** participation of a child, his or her parents and relatives and the members of the child’s extended family and community, where appropriate.

While the Ministry has employed a broader consultation process for this review of the CFSA than in the past, we believe the review can demonstrate a greater commitment to child and youth participation in future. We believe that this will only happen through a more open independent process leading to safe and honest discussion.

---

<sup>7</sup> Richard Barnhorst, *Children, Legalization and Public Policy: A Case Study of Ontario’s Child and Family Services Act*, (Stanford: Stanford University, 1987).

To that end we recommend that, through this legislation, a Select Committee for Children and Youth of the Ontario Legislature be struck to conduct each five year review of the CFSA instead of the review being conducted by the Ministry. We recommend that the Select Committee partner with youth in and from care to conduct the review.

Similarly, in addressing the rights of children in care in *Part IV – Care is Unpredictable*, Section B (page 15), we recommend that the rights of children in care include the right to participate meaningfully in the plan of care and to changes to it.

## **B. ENHANCING OUR UNDERSTANDING OF FAMILY**

In our discussion around permanency in *Part III – No One is Really There for Us* (on page 12), we will discuss how it is important that the system reflect the modern reality that children and youth can and will build their own families. Young people continue to tell the Advocate’s Office that they would like to have the option to choose their own family and support.

*My REAL Life Book* noted that there are many kinds of families, consisting of supportive people involved in one another’s lives:

Some involve biological relationships, others are made up of the people that we feel closest to. Youth in care often describe their foster parents, foster siblings, social workers, child and youth workers or mentors as family. Many youth in care refer to their peers as their “brothers and sisters.”<sup>8</sup>

For that reason, legislation needs to reflect and expand the notion of family and to permit young people to be connected to those who are part of their family in the modern sense. The CFSA must reflect child welfare’s duty to support and nurture all the positive adult relationships in a child’s life.

## **C. ACCESS TO SIBLINGS**

Section 104 of the CFSA provides two guarantees to the personal liberty of children and youth: the right to reasonable privacy and possession of personal property, and the right to religious instruction of his or her choice:

104. A child in care has a right,
- (a) to have reasonable privacy and possession of his or her own personal property; and
  - (b) to receive the religious instruction and participate in the religious activities of his or her choice, subject to Section 106.

---

<sup>8</sup> Office of the Provincial Advocate for Children and Youth, *My REAL Life Book* (Ontario: Office of the Provincial Advocate for Children and Youth, 2012), 35.

The Advocate's Office believes that the liberties of children and youth should include the right to access siblings when they are in care. Young people experience significant trauma when they are removed from parental care. Many children and youth are also separated from siblings who were often a primary source of support before coming into care. Despite the system's best efforts, children and youth continue to move from worker to worker.

As they move from placement to placement, or as one youth put it "migration", they may change schools, groups of friends, and certainly, families. All the while, they may be separated from their siblings. This is hardly a system designed to encourage the establishment of long term, permanent connections:

They listen suspiciously and I  
Go to a room that would never be  
Mine, with a roommate that is not  
My sister. I ask, "Where is my sister?  
Did you save her too?" But they  
Cannot Discuss This and I am told to  
Call My Worker. I am  
Thrown into a system, a new life, no  
Instructions manual given . . .

Sophie, 22,  
Former Youth in Care<sup>9</sup>

At the Youth Leaving Care Hearings and in other forums, we heard calls from many youth to help siblings stay together and to "help us see our siblings".<sup>10</sup> As stated in *My REAL Life Book*:

Children and youth have a right, where possible, to know their families and feel that they are part of their biological families. Adults working in the system need to realize that these bonds outside of CAS, healthy or unhealthy, are a part of each child who comes through those doors. The system needs to come up with alternative ways for children and youth to have meaningful interactions with them, if they so choose.<sup>11</sup>

We therefore recommend that Section 104 of the CFSA be amended to include a guarantee of sibling access where there is consent on the part of both siblings.

---

<sup>9</sup> Ibid., 12.

<sup>10</sup> Ibid., 22, 27.

<sup>11</sup> Ibid., 9.

## D. STABILITY IN THE SCHOOL SYSTEM

Section 105(2)e of the CFSA provides that children and youth in residential care have the right to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible. Children report that their education is disrupted when involved in child welfare. Often, it takes considerable time to be placed in school and frequently children and youth will spend time out of school as a result of changes to their plan of school. The Inquest into the Death of M.R. highlighted this issue. The Advocate's Office recommends a legislative requirement that children and youth are to be placed in school within one month of coming into care. The total time that a child of school age is not enrolled in school should not exceed an aggregate of six months while in care.

The *Education Act* must be amended as well to allow children to maintain school placement should they choose, even if they move out of area through a child welfare placement change.

## PART III – NO ONE IS REALLY THERE FOR US

Central to the Youth Leaving Care Hearings were the stories of young people taken from their homes for their own protection yet struggling on their own while in care. As noted in the report:

Being able to maintain a stable and steady relationship with at least one person makes all the difference in the world. I'm sure we can somehow fix things so children and youth in care can have a constant in their lives, someone who is there for them.<sup>12</sup>

Three years after the Hearings, young people continue to struggle, reporting to our Office that they are bounced from home to home (or placement to placement), worry they will have no place to live, that they have no stability in their lives and that the bureaucracy of care often undermines the support that they do have.

The importance of long-term supports was woven throughout *The Blueprint*. Many references were made to fostering connections to lifelong relationships and supports that would allow children to succeed.<sup>13</sup> *The Blueprint* recognized that in group care, inconsistent practices prevent some youth from receiving the supports and opportunities that they need to transition from care successfully. The report stressed the importance of consistent and stable relationships with staff and increasing partnerships with community agencies to provide the relevant supports for youth in their community.<sup>14</sup>

When these concerns are raised, discussion turns to permanency and, most often, adoption. Adoption is one response but not the only one. Our concept of permanency must be both flexible and supportive. It should recognize that children can and do build

---

<sup>12</sup> Ibid., 15.

<sup>13</sup> Ministry of Children and Youth Services, *The Blueprint*, 8, 18 and 19.

<sup>14</sup> Ibid., 18 and 19.

their own families. Children and youth identify positive supports that are not necessarily provided by the system. This should be encouraged and supported. It is a natural way for all people, not just for children in and from care, to build a support network.

The Advocate's Office recommends that the CFSA reflect that permanency means more than adoption, kinship care and customary care. The CFSA must reflect child welfare's duty to children and youth to support and nurture as a duty to support all the supportive, positive adult relationships in a child's life (employers, teachers, service professionals, neighbours, coaches, etc.) with a goal to ensuring they last a lifetime. This is why we have recommended in *Part II Section B*, below, (page 10) that the CFSA expressly reflect that children and youth in care have the right to those permanent and supportive relationships.

In addition, we make recommendations to allow young people to maintain connections with their siblings while in care and to have a right of access to siblings (pages 10, 15).

Young people would also benefit from improved permanency supports for children post-placement in kinship and adoption. Connections to birth family and adoptive family can both provide the stable and steady relationship we know matters so much and should be fostered.

When a Children's Aid Society removes a child or youth from their parents' care — for their own protection — and permits the child to be adopted, it is imperative the option to return to care be available to all children, right up to their 18<sup>th</sup> birthday, in the event the adoption breaks down. Currently, returning to care is only an option in the event adoption breakdown occurs by the youth's 16<sup>th</sup> birthday. Once a child is taken into care, they should never be forced to be without support, including for youth 16 – 18 years-old.

The Office of the Provincial Advocate for Children and Youth recommends that Crown Wards who are adopted or placed in kinship care whose adoption breaks down before they turn 18, should be permitted to return to care if they wish, and receive all the same educational entitlements and other support services that Crown Wards who have never been adopted or placed in kinship care would receive.

## **PART IV – CARE IS UNPREDICTABLE**

Care is unpredictable, reasons for this include: practice issues; the absence of expectations and the lack of commitment to the rights of children and youth in care; absence of articulated outcomes for children and youth in care; inadequate complaint mechanisms; and minimal oversight, accountability, and governance. Each will be addressed in turn.

## A. PRACTICE ISSUES

Much of the reform to the CFSA in the last 30 years has been in adjusting the threshold questions of risk and intervention. Whatever the applicable standard, the quality of the investigations conducted by child protection workers will affect whether the decisions made are the right ones and whether they are capable of being made with any degree of precision. When the most important decision affecting a child's life is made, we need it to be based on an investigation conducted with rigour, fairness and transparency.

Unfortunately, as discussed further below in section *E. Oversight, Accountability, and Governance* (on page 20), our ability to assess this is limited because of the lack of oversight of the investigative files. These practical issues must be at the forefront of our considerations when we think about implementation of changes. Changes to the law will not affect the on the ground reality of the manner in which the work is done. Increased and adequate training, investigations and oversight are necessary.

Jeffrey Baldwin, a 5-year-old boy, died at the hands of his grandparents, in their home in 2002. An Inquest was held into Jeffrey's tragic death. The Coroner's Inquest into Jeffrey's death made a number of recommendations directed at enhancing the quality of investigations and the training of workers. Much of that work can be done without legislative change,<sup>15</sup> however, some legislative change will be required. We therefore recommend that the Act be amended to incorporate the recommendations made in the Verdict of the Coroner's Jury into the Jeffrey's death to:

- i. Implement the Child Protection Information Network (CPIN) within 24 months of the verdict including a statutory framework relating to access to information. (Recommendation 1)
- ii. Amend the CFSA to include provisions governing the collection, retention and disclosure of information and develop specific directions. (Recommendation 3)
- iii. Making "Fast Track" available to all child protection workers and for the purpose of assessing proposed alternative caregivers and adults residing in a home where a child may be placed for foster care, kinship service, kinship care, or adoption. (Recommendation 32)
- iv. Introduce penalties for non-professionals who have direct and substantive knowledge of child abuse and neglect and fail to report. (Recommendation 37)

---

<sup>15</sup> Office of the Chief Coroner of Ontario, *Verdict of the Coroner's Jury into the Death of Jeffrey Baldwin* (Ontario: Office of the Chief Coroner, 2014). For example, see recommendations 14, 15, 21, 23, 29, 30 31, 32, 33 and 34 of the Verdict.

## B. SETTING EXPECTATIONS: ENHANCING THE RIGHTS OF CHILDREN AND YOUTH IN CARE

*The Blueprint* identified a number of essential elements that are within the control of the child welfare system and, if embraced as rights under the CFSA, would lead to fundamental change. Every child in care should have a right to:

- a) Permanent and lifelong relationships that meet their personal and cultural needs
- b) Grow up with many opportunities to develop permanent, supportive relationships with caregivers, staff, community members and extended family (including siblings)
- c) Be supported to participate fully and successfully in elementary and secondary school
- d) Play and to develop life skills
- e) Comprehensive support for mental, emotional and physical health and wellbeing
- f) Participate in extracurricular activities
- g) Examine and obtain a copy of the information recorded about them
- h) Information about supports, benefits and entitlements and how to access them
- i) Complain, access to a clear process to do so and to a response to a complaint

Following the Youth Leaving Care Hearings and the release of *The Blueprint*, the calls for fundamental change have been loud and clear and well received across the sector. Change is needed and it is needed now. By committing to change through the enhancement of the rights of children and youth in care, we can drive change throughout the system. We therefore recommend that the rights of children in care under Part V of the CFSA be amended as follows (amendments that are additions are in **blue**, those we recommend to be deleted are in red with **strikethrough**):

105.(2) A child in care has a right,

- (a) to participate **meaningfully** in the development of the child's individual plan of care and in any changes made to it;
- (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
- (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to Section 106, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; **and**
- (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible;

- (g) to permanent and lifelong relationships that meet their personal and cultural needs;
- (h) to grow up with many opportunities to develop permanent, supportive relationships with caregivers, staff, community members and extended family (including siblings);
- (i) to be supported to participate fully and successfully in elementary and secondary school;
- (j) to play and to develop life skills;
- (k) to comprehensive support for mental, emotional and physical health and wellbeing;
- (l) to participate in extracurricular activities;
- (m) to timely access and disclosure of the information recorded about the child, to correct the information and to an appeal process with respect to that information;<sup>16</sup> and
- (n) to a copy of the information recorded about the child upon the child leaving care.

## C. OUTCOMES

*The Blueprint* identified the need for the Ministry to track outcome data about children and youth in and from care and to publicly post performance indicators that show how children and youth are doing.

The Advocate's Office endorses legislated outcome-based planning for the province's children and youth in care and tracking how the system measures up against the expected outcomes. The first step is the establishment of expected outcomes which can provide a snapshot of how the system is doing. We recommend that the government set a minimum of eight outcomes for children and youth in care to be achieved by the age of 18 years and an additional eight outcomes to be achieved by the time they leave the care of the child welfare system at any age. Each society must report on their outcomes and the government report on the aggregate outcomes.

School is a key component to the future success of children and youth connected to child welfare. We endorse *The Blueprint's* call for school success protocols<sup>17</sup> that will address:

- Guiding principles and common expectations to make sure that children and youth in care are treated fairly and supported in their educational goals in ways that do not stigmatize them

---

<sup>16</sup> The advancement of this stand-alone right — in no way — should detract from our recommendation that the Government comprehensively address access to information and protection of privacy within the CFSA.

<sup>17</sup> Ministry of Children and Youth Services, *The Blueprint*, 9.

- Providing supports, including transportation, to allow children and youth to stay in their schools of origin when their residence changes if this is the best option for them
- Enrolling children and youth promptly when they must change schools with required documents (including their Ontario student record, transcripts and Ontario Education Numbers)
- Transitioning into and out of Section 23 classrooms
- Tracking the educational achievement of children and youth in care

The Advocate's Office recommends that these protocols be mandated under the CFSA and that the Ministry codify the expected outcomes. Children's Aid Societies must be mandated to have protocols with the local school boards which their children and youth attend. Further, we must measure performance against the expectations set by the protocols and report publicly on how those expectations are met. We must understand how well children in care are succeeding by measuring their progress and reporting it as a means of testing the efficacy of these protocols.

## D. COMPLAINT SYSTEM

Young people continue to raise concerns about the complaints system. These concerns include a lack of transparency and lack of a timely response to complainants. In addition, the power of the Minister to appoint a person for a further review of the complaint is seldom employed. *The Blueprint* called for an accessible complaints system.<sup>18</sup> We make a number of recommendations to improve the existing complaint and review mechanisms.

### (I) INTERNAL COMPLAINTS PROCEDURE

Section 109 of the CFSA establishes the requirement that service providers have a complaints procedure but does not set out required components. Young people need a transparent system and a timely response. We recommend that Section 109 of the CFSA be amended as follows:

- (1) A service provider who provides residential services to children or places children in residential placements shall establish **and make public** a written procedure, in accordance with the regulations, for **hearing, and** dealing with **and responding to** complaints regarding alleged violations of the rights under this Part of children in care.
- (2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,

---

<sup>18</sup> Ibid., 20.

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint.

Section 110 of the CFSA sets out the requirement that the Minister appoint a person not employed by the service provider to conduct a further review, if requested by one of the parties above. The Advocate's Office proposes streamlining complaints by naming the Advocate's Office as the next step in the complaint system as follows:

110. (1) Where a person referred to in subsection 109 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests **in writing** that the **Provincial Advocate Minister appoint a person to** conduct a further review of the complaint, the **Provincial Advocate shall Minister shall appoint a person who is not employed by the service provider to** do so.

(2) **The Provincial Advocate A person appointed under subsection (1)** shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing.

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

(4) **The Provincial Advocate A person appointed under subsection (1)** has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services).

(5) **The Provincial Advocate A person appointed under subsection (1)** shall, within thirty days after **receiving the written request day of the appointment**, complete the review, set out in a report his or her findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister

111. (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 110 (5), the Minister shall advise the person who made the complaint, **and** the service provider **and the Advocate's Office** of the decision.

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available.

## **(II) ACCESS TO RESIDENTIAL PLACEMENT ADVISORY COMMITTEE**

The CFSA mandates that children and their parents have the right to be heard regarding services affecting them and in decisions affecting them. Section 2(2) of the CFSA provides:

(2) Service providers shall ensure,

(a) that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving; and

(b) that decisions affecting the interests and rights of children and their parents are made according to clear, consistent criteria and are subject to procedural safeguards.

The Residential Placement Advisory Committee (RPAC) provides an important process and safeguard for young people. Section 34(6)b of the CFSA provides that RPAC shall review every residential placement of a child twelve years of age or older who objects to the placement and resides within the advisory committee's jurisdiction. The Advocate's Office believes that all children and youth, regardless of age, should be entitled to object to a placement within RPAC's jurisdiction thereby triggering a review by the committee. If a child is able to express an objection to a placement, the child should be entitled to the benefit of RPAC's review process.

The Advocate's Office recommends, therefore, that Section 34(6)b of the CFSA be amended to provide for a review of a placement by RPAC where a child of any age objects to the placement and resides within the advisory committee's jurisdiction.

The Advocate's Office would like to reiterate recommendations made in the submission to the Ministry related to the review of the CFSA in 2010, recommended with respect to RPAC:

An application to the Residential Placement Advisory Committee (RPAC) is a first step for many youth who are objecting to the placement selected by the society. There is a perception that reviews are not allowed for foster care placements.

- CFSA 34(1)c should be rewritten to state explicitly that a review process under RPAC applies to residential placements with foster parents.
- As well, the Advocate's Office recommends that CFSA Section 34(8) be amended to state that an advisory committee will interview the child, unless the child declines the interview, when the review is initiated because a child objects to the placement [CFSA 34(6)b] or the child has requested a review [CFSA34(7)].
- Finally, when RPAC requests information to carry out a review, there is currently no time limit on an agency's response to the request. CFSA 34

(8)c-d could be amended to specify a time limit by which a service or society must respond to RPAC's request for information.

### **(III) ACCESS TO CHILD AND FAMILY SERVICES REVIEW BOARD**

The Advocate's Office proposes changes to the Child and Family Services Review Board (CFSRB) to permit all children, regardless of age, to have access to the CFSRB and to make the orders of the CFSRB enforceable.

#### ***A. Removing Age Restriction***

The CFSRB also plays an important role in safeguarding the procedural and substantive rights of children and youth. Section 36(1) of the CFSA provides:

36. (1) A child who is twelve years of age or older and is in a residential placement to which he or she objects may, if the placement has been reviewed by an advisory committee under Section 34 and,

(a) the child is dissatisfied with the advisory committee's recommendation; or

(b) the advisory committee's recommendation is not followed,

apply to the Board for a determination of where he or she should remain or be placed.

As with RPAC, under a principled analysis, all children, regardless of age, who wish to apply to the CFSRB on a matter within the Board's jurisdiction, ought to be entitled to do so. The Advocate's Office recommends removing the age restriction in Section 36(1) of the CFSA to permit all children who wish to apply to the CFSRB on a matter within the Board's jurisdiction, to do so.

#### ***B. Making CFSRB Orders Enforceable***

The CFSRB also receives and reviews complaints pursuant to Section 68(1) and 68.1(1) of the CFSA. The powers of the CFSRB under 68(10) and 68.1(7) in dealing with complaints are limited and do not create enforceable orders that meaningfully respond to the complaint. Rather, much of the CFSRB's power is to direct the Society to deal with the complaint in a particular manner. The Advocate's Office recommends that the CFSRB have the power to make an enforceable order which remedies the issue raised in the complaint.

### **E. OVERSIGHT, ACCOUNTABILITY AND GOVERNANCE**

There are a number of mechanisms designed to enhance the accountability of Children's Aid Societies. They include Boards of Directors, Ministry program supervisors, serious occurrence reporting, Crown Ward reviews, licensing reviews, operational reviews, complaints mechanisms (including the CFSRB and RPAC) and the Advocate's Office. Despite this range of accountability mechanisms, more needs to be done.

## (I) AUDITS OF CHILD WELFARE FILES

### *Auditor General of Ontario Recommendations*

Child protection investigations and family service files are not subject to any real scrutiny and where there is scrutiny, issues come to light. By way of example, in his 2006 review of four Children's Aid Societies, the Auditor General of Ontario found a number of instances where requirements for ongoing service protection were not followed. The Auditor General recommended:<sup>19</sup>

- Periodic quality assurance reviews of referrals deemed ineligible for service
- Children's Aid Societies should verify and document adherence to the requirements for the recruiting, approving, training, and monitoring of foster parents
- That in order to help ensure that complaints get timely and appropriate attention and resolution as required under the *Child and Family Services Act*, Children's Aid Societies should:
  - ensure that internal policies and time requirements are adequate and complied with
  - maintain adequate records in order to properly track all complaints received, along with their resolution
- That all Children's Aid Societies should
  - comply with Ministry requirements to ensure all serious occurrences are reported to the Ministry in a timely fashion
  - ensure the required follow-up action is taken and documented for the protection of all parties involved

Regarding the child welfare program generally, the Auditor General considered a number of different aspects of the program including services provided to children who were not Crown Wards. In respect of those children, the Auditor General had previously recommended that the Ministry regularly review the non-Crown Ward files. In 2003, the Ministry conducted a review which revealed a number of areas for improvement. However, those audits were discontinued. Reviews of non-Crown-Ward files and child protection files were discontinued by the Ministry as of December 31, 2003.

In January, 2008, the Auditor General released a *Special Report to the Ministry of Children and Youth Services: Follow-up of 2006 Audits of the Child Welfare Program and Four Children's Aid Societies*. Therein, the Auditor General noted that the Ministry promised an integrated file review process and that an "Integrated File Review" process

---

<sup>19</sup> Office of the Auditor General of Ontario, *2006 Annual Report* (Queens Printer for Ontario, 2006), recommendations: 10, 12, 19 and 20, pages 72 – 73.

was developed that was to include regular reviews of both non-Crown-Ward and child-protection files beginning in early 2008.<sup>20</sup>

However, those integrated file reviews did not come into being and had not occurred at the time MCYS provided evidence to the Inquest into the Death of Jeffrey Baldwin in December, 2013. There is presently no systematic Ministry review of files for youth who are not Crown Wards (including child protection investigations) unless there is a serious occurrence or death which, for obvious reasons, is too late. This is another compelling reason for the Ministry to review investigation and family service files.

### *Information Derived from Paediatric Death Review Committee Recommendations*

When there is a death, if the child was in care or there was an open CAS file on the child or family within twelve months prior to the child's death, the death comes within the purview of the Paediatric Death Review Committee (PDRC) pursuant to the Joint Directive of the Office of the Chief Coroner and the Ministry. The PDRC reviews the death, and in certain circumstances, conducts a further PDRC – Child Welfare review and then issues recommendations.

In its 2013 report, the PDRC listed its most frequent recommendations made in child welfare cases. Those recommendations related to, among other issues:<sup>21</sup>

- Obtaining and incorporating previous child welfare history into risk assessment and case management, noting that
  - almost 60% of the cases reviewed involved families who were recipients of multiple child welfare interventions, sometimes over a period of many years and in various jurisdictions. Record checks and a full review of previous child welfare history will inform a comprehensive assessment of patterns of behaviour, risk to children and future planning. In 1/3 of the cases reviewed by PDRC, Child Welfare, fulsome evaluation and incorporation of the file history was absent.
- Enhancing the use of case conferencing in high risk cases, noting that frequently: a number of service providers are involved with a family and/or complex decisions must be made to ensure ongoing protection of children. Collaboration and information sharing in a case conference format has been identified as an effective means of service planning. In 25% of the cases reviewed, it was recommended that CASs utilize internal and external case conferencing as a preferred practice model in high risk, complex, and/or cases involving a variety of service providers.

---

<sup>20</sup> Auditor General, *Special Report for the Minister of Children and Youth Services: Follow-up of 2006 Audits of the Child Welfare Program and Four Children's Aid Societies* (Ontario: Auditor General, 2006).

<sup>21</sup> Office of the Chief Coroner for Ontario, *Paediatric Death Review Committee and Deaths Under Five Committee Annual Report 2013*, (Ontario: Office of the Chief Coroner for Ontario, 2013), 55.

- Developing enhanced skills, approaches and strategies to engage families in change to mitigate risk to children, noting that in that year's PDRC, Child Welfare reviews:

almost 60% of the cases demonstrated a history of unsuccessful attempts by staff to engage and/or motivate the caregivers into a mutual working relationship in order to mitigate risk to the children. This could manifest itself in caregiver behaviours such as avoidance, aggression, refusal, and lack of follow through with plans and goals. It was also noted in workers' reluctance or inability to include all caregivers in assessment of risk or in service delivery. 13% of the reports included recommendations to improve response to this issue.<sup>22</sup>

These, among the other issues noted in the report, were repeated in the 2014 PDRC report.<sup>23</sup> PDRC recommendations can provide valuable insight into why regular audits of child protection and children services files are necessary. It should be remembered that the PDRC reviews only a limited number of the child death files but the findings reflect serious issues that ought not to wait until a child dies before they are identified.

The Child and Family Services Act requires the Ministry to annually review the status of every child who has been a Crown Ward in the preceding 24 months and report the results of these reviews to the appropriate Society. The CFSA should include a provision that mandates the Ministry to perform a similar review of all protection files and non-Crown Ward children's services files. A review of files that occurs only as part of a PDRC Report is, for obvious reasons, an insufficient safeguard.

## **(II) ACCESS TO INFORMATION**

Often, in the absence of internal review procedures, transparency can be enhanced through access to information. However, there is no legislative framework governing access to information relating to the operations of Children's Aid Societies or the collection, use and disclosure of information within their purview. In addition, the regulatory framework does not permit the use of "Fast Track" outside of child protection investigations. The unproclaimed Part VIII of the CFSA which was to address many of the issues relating to access to information and protection of privacy was repealed in 2011. The importance of a legislative framework for the collection, disclosure and use of information by Children's Aid Societies has attracted comment from the Information and Privacy Commissioner. In her 2012 Annual Report, she noted:<sup>24</sup>

One of the foundational tenets of freedom of information is that organizations that receive significant public funding should be subject to public scrutiny through freedom of information laws. Ontario has made important advances in this effort by extending the Freedom of Information

---

<sup>22</sup> Ibid., 49 to 50.

<sup>23</sup> Office of the Chief Coroner for Ontario, *Paediatric Death Review Committee and Deaths Under Five Committee Annual Report 2014*, (Ontario: Office of the Chief Coroner for Ontario, 2014), 33, 35, 46.

<sup>24</sup> Information and Privacy Commissioner of Ontario, 2012 Annual Report (Ontario: Information and Privacy Commissioner of Ontario, 2013), 13.

and Protection of Privacy Act (FIPPA) to universities in 2006 and hospitals in 2012, but there are still institutions in the government and Broader Public Sector which are not covered by the Acts.

I recommend that the government launch a comprehensive review to compile a list of institutions, including Children's Aid Societies, which are primarily funded by government but are not yet covered by FIPPA or MFIPPA, the Municipal Freedom of Information and Protection of Privacy Act. This should be followed by a prompt assessment of these institutions — with the default position being that each institution on the list will be added to the appropriate Act, unless there are compelling reasons not to add a specific institution.

In her 2013 Annual Report, the Information and Privacy Commissioner of Ontario again drew attention to the absence of a legislative framework. She stated:<sup>25</sup>

In my 2004, 2009, and 2012 Annual Reports I recommended that Children's Aid Societies, which provide services for some of our most vulnerable citizens — children and youth in government care, be brought under FIPPA. I am disheartened by the complete lack of action to ensure transparency and accountability by these organizations that received significant public funding. As part of the modernization of the Acts, I call on the government to finally address this glaring omission and ensure that Children's Aid Societies are added to the list of institutions covered.

As noted above, the Baldwin Jury recognized the importance of a statutory framework for access to information and protection of privacy.<sup>26</sup>

Young people continue to have concerns relating to information recorded about them, how that information is exchanged, their inability to access it and how to correct it. We join the call for a comprehensive statutory framework addressing access to information and protection of privacy. We recommend that the statutory framework address the issues of exchange of information between societies and, at a minimum, permit:

- a) Young people to access their child welfare file within two weeks of making a request
- b) Young people to have the right to review the file with a person of their choosing
- c) Young people to make a correction to any information in their file and encouraging them to do so
- d) Direct that youth from care turning 18 be provided with a copy of their file should they request it and to be informed of that right

---

<sup>25</sup> Information and Privacy Commissioner of Ontario, *2013 Annual Report* (Ontario: Information and Privacy Commissioner of Ontario, 2014), 12.

<sup>26</sup> Office of the Chief Coroner, *Verdict of the Coroner's Jury into the Death of Jeffrey Baldwin*, Recommendation #3.

- e) Requests for information made by a former Crown Ward be responded to within a two-week period
- f) Restrict the exchange of information between child welfare and school authorities to decisions relating to placement in school and school progress
- g) Access to information by the Advocate's Office where performing advocacy services for children and youth in the Office's mandate

### **(III) WHISTLEBLOWER PROTECTION**

Children and youth in care are deserving of the protection afforded to the public through whistleblower legislation. However, not all of those charged with their care are employees covered by the *Public Service of Ontario Act, 2006*. For these reasons, we ask that the Province extend protection for whistleblowers who are not covered by that statute where there is a risk of harm to children and youth.

The Provincial Advocate requests that the Legislature enact legislation extending whistleblower protection to those employees not covered by the *Public Service of Ontario Act, 2006*, where a disclosure is made to the Advocate's Office involving a risk of harm to children and youth within its mandate.

Standing up for children and youth should not endanger your employment.

### **(IV) GOVERNANCE**

We know, through continued reports in the media and from other channels, that many children do not thrive, and indeed — that some do not survive — child welfare care. We have called upon the Province to examine the way in which all sectors of our society work together to protect children and families. The Coroner's Jury into the Death of Jeffrey Baldwin called upon the government to examine how to deliver services differently. Recommendation 2 provided:

The Government of Ontario shall direct the Ministry of Children and Youth Services upon the implementation of CPIN to undertake a feasibility study to explore amalgamating the existing children's aid societies into one coordinated agency under the Ministry of Children and Youth Services. The amalgamation plan should include stakeholder consultation with an end goal of providing seamless client service and financial efficiencies. The amalgamated children's aid society must be sensitive to the cultural and religious differences of the families they serve while recognizing that the safety of the province's children is paramount.

As evidence of a further call for a change to the way in which we protect children, the Baldwin Jury recommended:

The Ministry of Children and Youth Services and Ministry of Community Safety and Correctional Services, in consultation with the Ontario Association of Children's Aid Societies and provincial police authorities shall expand the Child and Youth Advocacy Centre model across Ontario

and provide the funding necessary to sustain this province-wide expansion.<sup>27</sup>

We draw attention to these recommendations not to endorse amalgamation or the Child and Youth Advocacy Centre model as solutions but to suggest that it is clear that we need to explore how best to serve the Province's children. Only when we are looking at the system as a whole can we explore the very important governance questions that remain. In order to make recommendations about governance, we need to have a broader discussion about how best to do this. We therefore recommend that the Province of Ontario engage in an open and transparent process that explores the means by which we protect children and youth in our Province across all sectors of our society and our Government.

## PART V – CARE ENDS & WE STRUGGLE

For many years, the Advocate's Office has highlighted the need for the system to help young people forge long term, permanent connections, such as families and friends, and identified barriers which interfered with the establishment of those connections. The Office provides practical resources, allowing young people to have a voice. In response to the *Building Families and Supporting Youth to be Successful Act, 2011*,<sup>28</sup> the Advocate's Office identified gaps in services and called upon the government to remedy them, recommending:

1. The age of protection should be raised to 18. Youth age 16 and 17 should be allowed to voluntarily enter care, even for the first time, up to their 18th birthday or, re-enter care if they had their Wardship terminated. In Ontario, other provincial acts recognizing 18 as the age of majority include the Election Act, the Education Act, the Age of Majority and Accountability Act and the Children's Law Reform Act. By setting the age of protection at 16, the CFSA is inconsistent with other legislation and creates a barrier to services for those between 16 and 18 who may not qualify for adult service systems and are legally barred from the child welfare system. Currently, youth aged 16 to 18 have very limited access to financial supports from Ontario Works and no access to the Ontario Disability Support Program and are required to be in school, so cannot work to support themselves. Youth aged 16 to 18 living in an abusive situation may have no choice but to stay because they are unable to access either the adult or child systems.
2. The Province should permit young people to stay in foster care beyond their 18th birthday. Due to current funding arrangements, they are required to leave foster home placements by their 18th birthday. At this age, youth formerly in care are moving into apartments, boarding homes, homeless shelters and other

---

<sup>27</sup> Ibid., Recommendation 19.

<sup>28</sup> Ontario, *Building Families and Supporting Youth to be Successful Act, 2011*, S.O. 2011, c.12

independent living situations. In contrast, the average age for independent living among the general population in Canada is 27 years of age.<sup>29</sup>

3. The Continued Care and Support for Youth program (CCSY) age limit should be increased to, and funded, from the current cut-off of age 21, up to 25-years-old across the province. Many youth, who qualify for CCSY because they are in school programs, are faced with the devastating reality of losing all support systems in their lives — financial and emotional — at a time when they are trying to create a stable future for themselves. Additionally, many youth in care do not begin to address their “coming into care” issues until they become adults. If they do not have the support of the agencies that raised them, their futures could be affected exponentially. At age 25, many youth may have completed a post-secondary program and/or possess a level of maturity that will be beneficial as they move forward in their lives.
4. Financial incentives should be provided for families who are willing to adopt children and youth with special needs and/or older teens, rather than keeping them in public care. The Raising Expectations report recommends the use of needs based criteria for subsidies ranging from 50% to 80% of the current foster rate.<sup>30</sup> It is estimated that it costs \$32,000.00 annually to keep a child in foster care or group care.<sup>31</sup>
5. Consistent with the recommendation from the Raising Expectations report, the Province should create a Provincial Adoption Agency to work parallel to Children’s Aid Societies (CASs) to coordinate adoption in the Province.<sup>32</sup> The primary role of CASs is protection services and as such, other services get lost amongst the competing priorities.
6. Revise the proposed amendment for Section 71.1 to say explicitly: “youth aged 16 and 17 who have left CAS care or customary care may return for services up until their 18th birthday and therefore be eligible for Continued Care and Support for Youth”
7. Revise the proposed amendments regarding an openness order so that:

An openness order for a person who is seven years of age or more shall not be made without the person’s written consent; and consent shall not be given until the person has had an opportunity

---

<sup>29</sup> Ontario Association of Children’s Aid Societies, *Child Welfare Report 2009/10* (Ontario: Ontario Association of Children’s Aid Societies, 2011), 27.

<sup>30</sup> Ministry of Children and Youth Services’ Expert Panel on Infertility and Adoption, *Raising Expectations: Recommendations of the Expert Panel on Infertility and Adoption* (Ontario: MCYS, 2009), 15.

<sup>31</sup> *Ibid.*, pages 9, 34.

<sup>32</sup> *Ibid.*, pages 8, 11.

to obtain counselling and independent legal advice with respect to the consent.<sup>33</sup>

At the Youth Leaving Care Hearings, as we have heard in our other work, young people reported that they faced challenges which included:

- 16 and 17 year old Crown Wards who left care and wanted to return but could not, leaving them without access to the Continued Care and Support for Youth program
- Needing the support of a Children's Aid Society after their 16<sup>th</sup> birthday but being unable to access services voluntarily, leaving them no choice but to remain in an abusive situation (or be homeless)
- Being forced to leave a foster home on their 18<sup>th</sup> birthday because care ended

The authors of *My REAL Life Book* put the challenges facing youth succinctly:

Every child in care will face the difficulties of care ending. The cycle of destruction needs to come to an end. There needs to be a great solution to this problem. Youth need to succeed in life the best they can. In order for this to happen, we all need support. We need to feel ready to transition into adulthood with all the necessary support and knowledge. There are over 8,000 youth in care in Ontario alone.<sup>34</sup>

In response to these concerns, the authors of *My REAL Life Book* recommended the following changes:

- Raise the age of protection so that youth between the ages of 16 – 18 who wish to, can enter care on a voluntary basis. Currently, a young person who has not received services from a child welfare agency prior to his or her 16<sup>th</sup> birthday is not eligible to begin receiving child welfare services once they turn 16.
- Raise the age for Extended Care and Maintenance (now known as Continued Care and Support for Youth) to the age of 25.
- Allow youth to stay in foster care and group home care until they are prepared for independence.
- The Province work with youth in and from care and other stakeholders to complete an "Action Plan for Fundamental Change". This later lead to *The Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group* which also endorsed raising the age of protection.

---

<sup>33</sup> Provincial Advocate for Children and Youth, *Submission to the Standing Committee on Social Policy Re: Bill 179* [Session 39:2] (Ontario: Provincial Advocate for Children and Youth, 2011) [provincialadvocate.on.ca/documents/en/Bill\\_179\\_Submission.pdf](http://provincialadvocate.on.ca/documents/en/Bill_179_Submission.pdf).

<sup>34</sup> Office of the Provincial Advocate for Children and Youth, *My REAL Life Book*, 20.

## EXTEND AGE OF PROTECTION ON A VOLUNTARY BASIS

The Advocate's Office hears daily from children and youth seeking assistance — seeking a voice. The Office has heard from young people who were facing situations reflected in the descriptions below:

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

Currently in Ontario, none of these vulnerable young people are entitled to child protection services which they are seeking. The law allows a young person to withdraw from parental control at sixteen.<sup>35</sup> The Advocate's Office supports both making services available on a voluntary basis to young people between the ages of 16 and 18, and youth over sixteen retaining the right to choose whether to come into care.

## EQUAL ACCESS TO RESOURCES

Young people who come into care through this access point should be entitled to the same financial services and supports provided to children and youth who entered care in other ways. For example, the Continued Care and Support for Youth Program (CCSY) provides financial and other supports to young people who have previously been in the care of a Children's Aid Society, either as a Crown Ward or under a legal custody order; as the subject of a customary care agreement; or eligible to receive Renewed Youth Supports services. CCSY supports, which are available to young people between the

---

<sup>35</sup> Ontario, *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s.65

ages of 18 to 21 years, should also be made available to young people who come into care under this Section. Similarly, the newly announced tuition assistance provided by the government for Crown Wards and former Crown Wards should also be an option accessible by the young people who are the subject of these amendments.

### **MAINTAINING THE OPTION OF SOCIAL ASSISTANCE FOR THOSE WHO CHOOSE NOT TO COME INTO CARE**

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

Therefore, the Advocate's Office recommends:

- a) The Province extend protection services within the meaning of the *Child and Family Services Act* to young people between the ages of 16 to 18 who seek them so that children who are not in and from care may benefit from the services offered
- b) Ensure that young people who enter care under this manner are entitled to financial and other supports under the CCSY program (including tuition assistance)
- c) Ensure that the Province and Children's Aid Societies be mandated to provide service to a youth seeking service under this Section and be prohibited from refusing service
- d) Ensure that young people between 16 – 17 years of age who withdraw from parental control but are not interested in entering into the care of a Children's Aid Society are not prohibited from applying for Ontario Works or other social assistance programs

## **PART VI – WE KEEP LOSING WHO WE ARE: FIRST NATIONS VOICES**

*My REAL Life Book* identified numerous challenges faced by First Nations children in care, including a loss of their culture.<sup>36</sup>

*The Blueprint* recognized as essential and urgent that there be a separate Blueprint development process for First Nations, Métis and Inuit children and youth.

---

<sup>36</sup> Office of the Provincial Advocate for Children and Youth, *My REAL Life Book*, 22.

The Advocate's Office is convening a Feathers of Hope forum to address child welfare issues facing First Nations children and youth. That forum is expected to take place in 2015. The Advocate's Office makes no recommendations in advance of that forum save for the recommendation that decision makers listen well to the young people at the forum.

## **PART VII – CONCLUSION**

We must continue to move forward by expressly recognizing the Convention rights of children in care, giving meaning to those rights and consistency of care by setting expectations that accord to them, measuring the outcomes for our children and youth, providing means by which they can develop permanent and lifelong relationships and affording meaningful oversight and mechanisms to redress complaints. The legislative amendments proposed here will help the move towards fundamental change. These amendments should not preclude a larger and more encompassing public discussion about the means by which we protect the Province's children.

## **SUMMARY OF RECOMMENDATIONS**

The Provincial Advocate for Children and Youth recommends:

### **PART I – WE ARE VULNERABLE**

#### **A. INCORPORATING CONVENTION RIGHTS**

1. That the purposes stated in the CFSA reflect our commitment to the rights of children and youth by amending Section 1.(2)3 of the CFSA to add the words “and delivered” and to add the following:

[to recognize that children's services should be provided **and delivered** in a manner] ...

v. that reflects the principles expressed in the United Nations Convention on the Rights of the Child.

#### **B. ACCESS TO ADVOCACY: OBLIGATION TO NOTIFY ALL CHILDREN SEEKING AND RECEIVING SERVICES UNDER THE CFSA OF RIGHT TO CONTACT ADVOCATE'S OFFICE**

2. That the CFSA be amended to provide that all children and youth seeking or receiving services within the meaning of the CFSA have the right to be informed of the existence of the Advocate's Office.
3. That all services funded under the CFSA should be required to prominently display a poster about Advocate's Office where children, youth and their families can see it.

They should have the right to private contact with the Advocate's Office, should they wish, by telephone or in person.

4. That as an additional safeguard, for young people who may not feel safe contacting the Advocate's Office from group homes, foster homes or other residential services, all public and separate schools (elementary and secondary) should be required to display the Advocate's Office's poster. Students should also be permitted to contact the Advocate's Office in private.

## **PART II – WE ARE ISOLATED**

### **A. MEANINGFUL PARTICIPATION OF YOUTH**

5. That Section 1.(2)3.iv. of the CFSA be amended that:

[...services should be provided **and delivered** in a manner that]

iv. includes the **meaningful** participation of a child, his or her parents and relatives and the members of the child's extended family and community, where appropriate.

6. That a Select Committee for Children and Youth of the Ontario Legislature be struck to conduct each five year review of the CFSA instead of the review being conducted by the Ministry.
7. That the Select Committee partner with youth in and from care to conduct the review.

### **B. ENHANCING OUR UNDERSTANDING OF FAMILY**

8. The CFSA must reflect child welfare's duty to support and nurture all the positive adult relationships in a child's life. Legislation needs to reflect and expand the notion of family and to permit young people to be connected to those who are part of their family in the modern sense.

### **C. ACCESS TO SIBLINGS**

9. That Section 104 of the CFSA be amended to include a guarantee of sibling access where there is consent on the part of both siblings.

### **D. STABILITY IN THE SCHOOL SYSTEM**

10. The Education Act be amended to allow children to maintain school placement should they choose, even if they move out of area through a child welfare placement change.

## PART III – NO ONE IS REALLY THERE FOR US

11. Crown Wards who are adopted or placed in kinship/customary care placement whose adoption breaks down before they turn 18, should be permitted to return to or enter care and receive all the same educational entitlements and other support services as received by Crown Wards who have never been adopted.

## PART IV – CARE IS UNPREDICTABLE

### A. PRACTICE ISSUES

12. That the Child Protection Information Network (CPIN) be implemented within 24 months of the Baldwin Jury's verdict. This should include a statutory framework relating to access to information.
13. That the CFSA be amended to include provisions governing the collection, retention and disclosure of information and develop specific directions.
14. Make "Fast Track" available to all child protection workers and for the purpose of assessing proposed alternative caregivers and adults residing in a home where a child may be placed for foster care, kinship service, kinship care, or adoption.
15. That penalties be introduced for non-professionals who have direct and substantive knowledge of child abuse and neglect and fail to report.

### B. SETTING EXPECTATIONS: ENHANCING THE RIGHTS OF CHILDREN AND YOUTH IN CARE

16. That the rights of children in care under Part V of the CFSA be amended as follows:

105.(2) A child in care has a right,

- (a) to participate **meaningfully** in the development of the child's individual plan of care and in any changes made to it;
- (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
- (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to Section 106, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; **and**

- (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible;
- (g) to permanent and lifelong relationships that meet their personal and cultural needs;
- (h) to grow up with many opportunities to develop permanent, supportive relationships with caregivers, staff, community members and extended family (including siblings);
- (i) to be supported to participate fully and successfully in elementary and secondary school;
- (j) to play and to develop life skills;
- (k) to comprehensive support for mental, emotional and physical health and wellbeing;
- (l) to participate in extracurricular activities;
- (m) to timely access and disclosure of the information recorded about the child, to correct the information and to an appeal process with respect to that information;<sup>37</sup> and
- (n) to a copy of the information recorded about the child upon the child leaving care.

## C. OUTCOMES

17. That the government set a minimum of eight outcomes for children and youth in care to be achieved by the age of 18 years and an additional eight outcomes to be achieved by the time they leave the care of the child welfare system at any age. Each society must report on their outcomes and the government report on the aggregate outcomes.
18. That school success protocols be mandated under the CFSA and that the Ministry codify expected outcomes that will address:
  - Guiding principles and common expectations to make sure that children and youth in care are treated fairly and supported in their educational goals in ways that do not stigmatize them
  - Providing supports, including transportation, to allow children and youth to stay in their schools of origin when their residence changes if this is the best option for them

---

<sup>37</sup> The advancement of this stand-alone right — in no way — should detract from our recommendation that the Government comprehensively address access to information and protection of privacy within the CFSA.

- Enrolling children and youth promptly when they must change schools with required documents (including their Ontario student record, transcripts and Ontario Education Numbers)
- Transitioning into and out of Section 23 classrooms
- Tracking the educational achievement of children and youth in care

**(i) Internal Complaints Procedure**

19. That Section 109 of the CFSA be amended as follow:

(1) A service provider who provides residential services to children or places children in residential placements shall establish **and make public** a written procedure, in accordance with the regulations, for **hearing, and** dealing with **and responding to** complaints regarding alleged violations of the rights under this Part of children in care.

(2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint.

20. That the Advocate's Office be the next step in the complaint system as follows:

110. (1) Where a person referred to in subsection 109 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests in writing that the **Provincial Advocate Minister appoint a person to** conduct a further review of the complaint, the **Provincial Advocate shall Minister shall appoint a person who is not employed by the service provider to** do so.

(2) **The Provincial Advocate A person appointed under subsection (1)** shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing.

(3) *The Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

(4) **The Provincial Advocate A person appointed under subsection (1)** has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services).

(5) **The Provincial Advocate A person appointed under subsection (1)** shall, within thirty days after **receiving the written request day of the appointment,**

complete the review, set out in a report his or her findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister

111. (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 110 (5), the Minister shall advise the person who made the complaint, **and** the service provider **and the Advocate's Office** of the decision.

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available.

### ***(ii) Access to Residential Placement Advisory Committee***

- 21. That Section 34(6)(b) of the CFSA be amended to provide for a review of a placement by RPAC where a child of any age objects to the placement and resides within the advisory committee's jurisdiction.
- 22. That the CFSA 34 (1) c should be rewritten to state explicitly that a review process under RPAC applies to residential placements with foster parents.
- 23. That CFSA Section 34 (8) be amended to state that an advisory committee will interview the child — unless the child declines the interview — when the review is initiated because a child objects to the placement [CFSA 34 (6) b] or the child has requested a review [CFSA 34 (7)].
- 24. That the CFSA 34 (8) c,d be amended to specify a time limit by which a service or society must respond to an RPAC's request for information, ensuring a reasonable time limit on an agency's response to a request.

### ***(iii) Access to Child and Family Services Review Board***

#### **A. Removing Age Restriction**

- 25. That the age restriction in Section 36(1) of the CFSA be removed to permit all children who wish to apply to the CFSRB on a matter within the Board's jurisdiction, to do so.

#### **B. Making CFSRB Orders Enforceable**

- 26. That the CFSRB be granted the power to make an enforceable order which remedies the issue raised in the complaint.

## **E. OVERSIGHT, ACCOUNTABILITY AND GOVERNANCE**

### **(i) Audits of Child Welfare Files**

27. The Child and Family Services Act be revised to require that the Ministry annually review the status of all protection files and non-Crown Ward children's services files in the preceding 24 months and report the results of these reviews to the appropriate Society, similar to the review of files of every child who has been a Crown Ward.

### **(ii) Access to Information**

28. That a comprehensive statutory framework addressing access to information and protection of privacy be implemented immediately. The statutory framework must address the issues of exchange of information between societies and, at a minimum, permit:

- a) Young people to access their child welfare file within two weeks of making a request
- b) Young people to have the right to review the file with a person of their choosing
- c) Young people to make a correction to any information in their file and encouraging them to do so
- d) Youth from care turning 18 be provided with a copy of their file should they request it and to be informed of that right
- e) Requests for information made by a former Crown Ward be responded to within a two-week period
- f) The exchange of information be restricted between child welfare and school authorities to decisions relating to placement in school and school progress
- g) Access to information by the Advocate's Office where performing advocacy services for children and youth in the mandate

### **(iii) Whistleblower Protection**

29. That whistleblower protection be extended to those employees not covered by the *Public Service of Ontario Act, 2006*, where a disclosure is made to the Advocate's Office involving a risk of harm to children and youth within its mandate.

### **(iv) Governance**

30. That the Province of Ontario engage in an open and transparent process that explores the means by which we protect children and youth in our Province across all sectors of our society and our Government.

## **PART V – CARE ENDS & WE STRUGGLE**

### **EXTEND AGE OF PROTECTION ON A VOLUNTARY BASIS**

31. The Province should extend protection services within the meaning of the *Child and Family Services Act* to young people between the ages of 16 to 18 who seek them.

### *Equal access to resources*

32. Ensure that young people who enter care through this manner are entitled to financial and other supports under the CCSY program (including tuition assistance).
33. That the Province and Children's Aid Societies be mandated to provide service to a youth seeking service under this Section and be prohibited from refusing service.

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

34. That young people between 16 – 17 years of age who withdraw from parental control but are not interested in entering into the care of a Children's Aid Society are not prohibited from applying for Ontario Works or other social assistance programs

## **PART VI – WE KEEP LOSING WHO WE ARE: FIRST NATIONS VOICES**

35. That decision makers listen well to the recommendations made by young people at the Feathers of Hope Child Welfare forum set to take place in 2015.

**Provincial Advocate**  
*for Children & Youth*

**L'intervenant provincial**  
*en faveur des enfants & des jeunes*

Office of the Provincial Advocate for  
Children and Youth  
401 Bay Street, Suite 2200  
Toronto, Ontario M7A 0A6

T: (416) 325-5669

Toll-free: 1-800-263-2841

F: (416) 325- 5681

TTY: (416) 3255-2841

[advocacy@provincialadvocate.on.ca](mailto:advocacy@provincialadvocate.on.ca)

[www.provincialadvocate.on.ca](http://www.provincialadvocate.on.ca)