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THIRD READING**

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Ian D. Izard, Q.C., Law Clerk

**HONOURABLE WALLY OPPAL
ATTORNEY GENERAL AND MINISTER
RESPONSIBLE FOR MULTICULTURALISM**

BILL 34 -- 2006

REPRESENTATIVE FOR CHILDREN AND YOUTH ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Part 1 -- Interpretation

Definitions

1 In this Act:

"child" means a person under 19 years of age;

"critical injury" means an injury to a child that may

- (a) result in the child's death, or
- (b) cause serious or long-term impairment of the child's health;

"designated services" means any of the following services or programs provided or funded by the government for children and their families:

- (a) services or programs under the *Adoption Act*, the *Child Care BC Act*, the *Child Care Subsidy Act*, the *Child, Family and Community Service Act*, the *Community Living Authority Act* and the *Youth Justice Act*;
- (b) early childhood development and care services;
- (c) mental health services for children;
- (d) addiction services for children;
- (e) services for youth and young adults during their transition to adulthood;
- (f) additional services or programs that are prescribed under section 29 (2) (a);

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

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"public body" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"representative" means the Representative for Children and Youth appointed under section 2 and, other than in sections 2 (1), (3) and (4), 4 (2) and (3) and 5, includes a person appointed under section 5 to act as the Representative for Children and Youth;

"reviewable services" means any of the following designated services:

- (a) services or programs under the *Child, Family and Community Service Act* and the *Youth Justice Act*;
- (b) mental health services for children;
- (c) additional designated services that are prescribed under section 29 (2) (b);

"special committee" means a special committee of the Legislative Assembly;

"standing committee" means, except in sections 18 and 21, the Select Standing Committee on Children and Youth;

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

Part 2 -- Appointment of Representative

Appointment of Representative for Children and Youth

2 (1) The Legislative Assembly, by resolution, may appoint as the Representative for Children and Youth a person who has been unanimously recommended for the appointment by a special committee.

(2) The representative is an officer of the Legislature.

(3) The representative must be appointed for a term of 5 years and may be reappointed under subsection (1) for a further 5 year term.

(4) A person must not be appointed under subsection (1) for a third or subsequent term.

Remuneration

3 (1) The representative is entitled

(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, and

(b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the functions and duties of the office.

(2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the representative.

Resignation, removal or suspension of representative

4 (1) The representative may resign at any time by giving written notice

(a) to the Speaker of the Legislative Assembly, or

(b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

(2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the representative, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.

(3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may suspend, by unanimous resolution, the representative for cause or incapacity, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Appointment of acting representative

5 (1) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, the Legislative Assembly, on the recommendation of the standing committee, may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:

- (a) the suspension ends;
- (b) a person is appointed under section 2;
- (c) the representative returns to office after the temporary absence.

(2) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:

- (a) the suspension ends;
- (b) a person is appointed under section 2;
- (c) the representative returns to office after the temporary absence.

Part 3 -- Representative's Role, Functions and General Powers

Role and functions of representative

6 (1) The role of the representative is to do the following in accordance with this Act:

- (a) support, assist, inform and advise children and their families respecting designated services;

(b) increase the accountability of ministries and other public bodies responsible for the provision of designated services by monitoring, reviewing and auditing the provision of those services;

(c) review, investigate and report on the critical injuries and deaths of children as set out in Part 4.

(2) In carrying out his or her role under subsection (1), the representative may perform any of the following functions:

(a) meet with and interview children and their families;

(b) take into consideration the specific needs and life circumstances of youth, especially those approaching young adulthood;

(c) provide information and advice to children and their families about how to effectively access designated services and how to become effective self advocates with respect to those services;

(d) advocate on behalf of children and families receiving or eligible to receive designated services and, when appropriate, participate in processes in which decisions are made about the provision of those services;

(e) promote in communities the establishment of advocacy services for children and their families in relation to designated services;

(f) monitor the performance of a ministry or other public body responsible for the provision of a designated service in relation to establishing and meeting performance measures for the provision of that service;

(g) monitor quality assurance activities with respect to the provision of a designated service;

(h) undertake or collaborate in research related to improving designated services or addressing the needs of children and their families receiving those services;

(i) perform any other prescribed functions.

Representative's staff

7 (1) The representative, in accordance with the *Public Service Act*, may appoint

(a) one or more deputy representatives in accordance with the regulations, and

(b) any other employees necessary to enable the representative to exercise the powers and perform the functions and duties of the office.

(2) Before appointing a deputy representative under subsection (1) (a), the representative must consider the skills, qualifications and experience of the person, including the person's understanding of or involvement in the lives of aboriginal children and their families in British Columbia.

(3) For the purpose of the application of the *Public Service Act* to subsection (1) of this section, the representative is deemed to be a deputy minister.

(4) The representative may retain consultants, experts, specialists, or other persons that the representative considers necessary to enable or assist the representative to exercise the powers or perform the functions or duties under this Act.

(5) The representative may establish the remuneration and other terms and conditions of a person retained under subsection (4) and the *Public Service Act* does not apply in respect of that person.

Power to delegate

8 (1) The representative may delegate, in writing, to a person or class of persons any power, function or duty of the representative under this Act, subject to terms and conditions the representative considers appropriate, except the power

(a) to delegate under this section, and

(b) to make a report under this Act.

(2) A delegation under this section is revocable at will and does not prevent the representative from exercising the delegated power at any time.

(3) If the representative who makes a delegation ceases to hold office, the delegation continues in effect so long as the delegate continues in office unless revoked by a succeeding representative.

(4) A person purporting to exercise a power or perform a function or duty of the representative through a delegation under this section must produce, on request, evidence of the person's authority to exercise the power or perform the function or duty.

No power to act as legal counsel

9 The representative may not act as legal counsel in person or by agent.

Right to information

10 (1) The representative has the right to any information that

(a) is in the custody or control of a public body, and

(b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.

(2) A public body that has custody or control of information to which the representative is entitled under subsection (1) must disclose that information to the representative.

(3) The representative may collect from a person any information that is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.

(4) This section applies despite any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

Part 4 -- Reviews and Investigations of Critical Injuries and Deaths

Reviews of critical injuries and deaths

11 (1) After a ministry or other public body responsible for the provision of a reviewable service becomes aware of a critical injury or death of a child who was receiving, or whose family was receiving, the reviewable service at the time of, or in the year previous to, the critical injury or death, the ministry or other public body must provide information respecting the critical injury or death to the representative for review.

(2) For the purposes of subsection (1), the ministry or other public body may compile the information relating to one or more critical injuries or deaths and provide that information to the representative in time intervals agreed to between the ministry or other public body and the representative.

(3) The representative may conduct a review for the purpose of identifying and analyzing recurring circumstances or trends to inform improvements to reviewable services or broader public policy initiatives.

Investigations of critical injuries and deaths

12 (1) The representative may investigate the critical injury or death of a child if, after the completion of a review of the critical injury or death of the child under section 11, the representative determines that

(a) the reviewable service or the policies or practices of the ministry or other public body responsible for the provision of the reviewable service may have contributed to the critical injury or death, and

(b) the critical injury or death

(i) was, or may have been, due to one or more of the circumstances set out in section 13 (1) of the *Child, Family and Community Service Act*,

(ii) occurred, in the opinion of the representative, in unusual or suspicious circumstances, or

(iii) was, or may have been, self-inflicted or inflicted by another person.

(2) The standing committee may refer to the representative for investigation the critical injury or death of a child.

(3) After receiving a referral under subsection (2), the representative

(a) may investigate the critical injury or death of the child, and

(b) if the representative decides not to investigate, must provide to the standing committee a report of the reasons the representative did not investigate.

Jurisdiction of representative in investigations

13 Despite section 12, this Act does not authorize the representative to investigate the critical injury or death of a child

(a) until the completion of a criminal investigation and criminal court proceedings respecting the critical injury or death, and

(b) if there are processes set out in one or more enactments authorizing or requiring a ministry or other public body responsible for the provision of a reviewable service, or any other public body, to investigate the critical injury or death of the child, until the earlier of

(i) the completion of all those processes, and

(ii) one year after the critical injury or death of the child.

Powers relating to investigations

14 In an investigation under this Part, the representative has the powers, privileges and protections given under sections 12, 15 and 16 of the *Inquiry Act* to a commissioner appointed under Part 2 of that Act.

Multidisciplinary team

15 In accordance with the regulations, the representative may establish and appoint the members of a multidisciplinary team to provide advice and guidance

to the representative respecting the reviews and investigations of critical injuries and deaths of children conducted under this Part.

Reports after reviews and investigations

16 (1) The representative may aggregate and analyze the information received from the reviews and investigations conducted under sections 11 and 12 and produce a report of the aggregated and analyzed information that does not contain information in individually identifiable form.

(2) The representative must provide a report made under subsection (1) to the following:

(a) the standing committee;

(b) the ministry or other public body responsible for the provision of a reviewable service that is a subject of the report;

(c) any other ministry, public body or person that the representative considers appropriate.

(3) After an investigation of the critical injury or death of a child under section 12, the representative must make a report on the individual critical injury or death of the child.

(4) A report made under subsection (3) must contain the representative's reasons for undertaking the investigation and may contain the following:

(a) recommendations for the ministry or other public body responsible for the provision of a reviewable service, or for any other public body or person the representative considers appropriate;

(b) personal information, if, in the opinion of the representative, it is necessary to establish the grounds for the findings and recommendations contained in the report;

(c) any other matters the representative considers relevant.

(5) Subject to subsection (7), a report made under subsection (3) must be provided to

(a) the standing committee,

(b) the ministry or other public body responsible for the provision of a reviewable service that is the subject of the report, and

(c) the ministry or other public body that is the subject of recommendations in the report, if not already provided a report in accordance with paragraph (b).

(6) Subject to subsection (7), a report or part of a report made under subsection (3) respecting the critical injury or death of a child may be provided to one or more of the following:

(a) the child's parent;

(b) the guardian of the person of the child at the time the report is completed;

(c) the director who has care of the child, as care is defined in section 1 (1) of the *Child, Family and Community Service Act*;

(d) the child, if the child who sustained the critical injury is 12 years of age or older at the time the report is completed;

(e) the Public Guardian and Trustee;

(f) any other person that the representative considers appropriate.

(7) In providing a report or part of a report under subsection (5) (a) or (c) or (6) (a), (b), (d), (e) or (f), the representative

(a) must not disclose personal information if the disclosure would be an unreasonable invasion of an individual's personal privacy, as set out in section 22 (2) to (4) of the *Freedom of Information and Protection of Privacy Act*, and

(b) may decide not to disclose information if the disclosure would be harmful to individual or public safety, as set out in section 19 of the *Freedom of Information and Protection of Privacy Act*.

(8) Without the prior written consent of the representative, a report or part of a report provided under subsection (5) or (6) to the ministry, another public body, the standing committee or a person must be kept confidential.

Part 5 -- Administrative and General Provisions

Service plan

17 (1) For the 2007/2008 fiscal year of the government and for each subsequent fiscal year of the government, the representative must prepare a service plan that includes a statement of goals and identifies specific objectives and performance measures that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(2) The representative must deliver a service plan described in subsection (1) to the Speaker, and the Speaker must lay the service plan before the Legislative Assembly and the standing committee as soon as possible.

Preparation of estimates for appropriation purposes

18 (1) In this section and section 21, "**standing committee**" means the Select Standing Committee on Finance and Government Services.

(2) For the 2007/2008 fiscal year of the government and for each subsequent fiscal year of the government, the representative must present to the standing committee an estimate of the resources, stated in a form suitable for inclusion in the main estimates, that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(3) The standing committee must review and may adjust as it considers appropriate the estimate received under subsection (2) and must transmit the resulting estimate to the minister responsible for the *Financial Administration Act*.

(4) The estimate transmitted under subsection (3) is deemed to be recommended by the standing committee and must be included by the minister responsible for the *Financial Administration Act* as part of the main estimates for the fiscal year in respect of which the estimate was made and submitted to the Lieutenant Governor for recommendation to the Legislative Assembly.

(5) Notice of a meeting of the standing committee for the purposes of subsection (3) must be given to the representative and to the chair of Treasury Board.

Annual reports

19 (1) Beginning in 2008, the representative must report annually, before September 30 of each year, to the Speaker of the Legislative Assembly on

(a) the work of the representative's office, and

(b) the attainment of the goals and the specific objectives and performance measures of the representative as set out in the service plan referred to in section 17 (1),

and this report must include financial statements for the representative prepared in accordance with generally accepted accounting principles.

(2) In relation to subsection (1) (b), the report must compare actual results for the preceding fiscal year with the expected results identified in the service plan for the representative for that fiscal year.

(3) The Speaker must lay each annual report before the Legislative Assembly and the standing committee as soon as possible.

Special reports

20 (1) The representative may make a special report to the Legislative Assembly if the representative considers it necessary to do so.

(2) A report made under subsection (1) may contain the following:

(a) recommendations for the ministry or other public body responsible for the provision of a designated service, or for any other public body;

(b) a report of the level of compliance of the ministry or other public body responsible for the provision of a designated service, or of any other ministry or public body, with the recommendations made in a prior report of the representative under this Act;

(c) any other matter the representative considers necessary.

(3) The representative must deliver the special report to the Speaker, and the Speaker must lay the report before the Legislative Assembly and the standing committee as soon as possible.

Other financial requirements

21 (1) If required by the standing committee referred to in section 18 (1) or the minister responsible for the *Financial Administration Act*, the representative must submit financial reports and statements in the form, with the information and at the time the standing committee or the minister requests.

(2) The minister responsible for the *Financial Administration Act* may direct the Comptroller General to examine, and report to Treasury Board on, any or all of the financial and accounting operations of the representative.

(3) In accordance with the *Auditor General Act*, the Auditor General must audit the accounts of the representative at least once each year.

Agreements

22 (1) In this section, "**information-sharing agreement**" means an agreement that sets conditions on one or more of the following:

(a) the exchange of personal information between the representative and a person, a group of persons or an organization;

(b) the disclosure of personal information by the representative to a person, a group of persons or an organization;

(c) the collection of personal information by the representative from a person, a group of persons or an organization,

and includes a data-matching agreement but does not include an agreement to share information obtained by the representative under an agreement authorized under this section.

(2) The representative may enter into an agreement for the purpose of exercising the powers and performing the functions and duties under this Act.

(3) Without limiting subsection (2) and subject to the regulations, the representative may enter into an information-sharing agreement with

(a) the government of Canada or an agency of that government,

(b) the government of a province or other jurisdiction in Canada or an agency of that government,

(c) a public body, or

(d) a legal entity representing an aboriginal community.

(4) Section 69 (3) and (4) of the *Freedom of Information and Protection of Privacy Act* applies to information-sharing agreements made under this section.

Confidentiality

23 (1) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, the representative must take an oath before the Clerk of the Legislative Assembly

(a) to faithfully and impartially exercise the powers and perform the functions and duties of the representative, and

(b) not to divulge any information received under this Act, except as permitted under this Act.

(2) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, each deputy representative appointed under section 7 (1) (a) must take an oath before the representative

(a) to faithfully and impartially exercise the powers and perform the functions and duties delegated by the representative to the deputy representative, and

(b) not to divulge any information received under this Act, except as permitted under this Act.

(3) For the purposes of subsection (2), the representative is a commissioner for taking affidavits in British Columbia.

(4) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the exercise of powers and the performance of functions and duties under this Act.

(5) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of any matter coming to their knowledge in the exercise of powers and the performance of functions and duties under this Act, except

(a) to enforce the representative's powers of review and investigation,

(b) to enforce compliance with this Act, or

(c) with respect to a trial of a person for perjury.

(6) Subsection (5) does not apply to a court proceeding commenced under the *Child, Family and Community Service Act*.

(7) Subject to subsections (5), (6) and (8), the representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 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*.

(8) Subsection (7) does not apply if

(a) the person who made the report consents to the disclosure, or

(b) the disclosure is required or authorized under the *Child, Family and Community Service Act*.

Communications privileged

24 Anything said, any information supplied or any record produced during

(a) a review or an investigation by the representative or a person appointed, employed or retained under section 7 (1) or (4), or

(b) consultation with a member of a multidisciplinary team appointed under section 15

is privileged as if the investigation, review or consultation were a proceeding before a court.

Personal liability protection

25 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against

(a) the representative,

(b) a person appointed, employed or retained under section 7 (1) or (4), or

(c) a member of a multidisciplinary team appointed under section 15

because of anything done or omitted in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any function or duty under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

(3) Subsection (1) does not absolve the government from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government would be vicariously liable if this section were not in force.

(4) The government must indemnify any person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken against the person for anything done or omitted in good faith as described in subsection (1).

Communication by child

26 (1) If a child in a foster home, group home, facility or other place in which a designated service is provided asks to communicate with the representative, the person in charge of that place must immediately forward the request to the representative.

(2) If a child in a foster home, group home, facility or other place in which a designated service is provided writes a letter addressed to the representative, the person in charge of that place must immediately forward the letter unopened to the representative.

Protection for persons giving information to or assisting representative

27 A person must not discharge, suspend, expel, intimidate, coerce, evict or impose a financial or other penalty on or otherwise discriminate against another person because the other person gives information to the representative or otherwise assists the representative in an investigation or other proceeding under this Act.

Offence

28 (1) A person who contravenes section 27 commits an offence and is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(2) Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

29 (1) The Lieutenant Governor in Council may make regulations authorized by section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) for the purposes of the definition of "designated services", prescribing an additional service or program that is

(i) provided, authorized or funded under an Act,

(ii) provided, authorized or funded by a ministry or agency of the government, or

(iii) provided in a facility or class of facilities licensed or regulated under an Act;

(b) for the purposes of the definition of "reviewable services", prescribing an additional designated service that is a reviewable service;

(c) prescribing other functions of the representative;

(d) respecting the qualifications of a deputy representative or the procedures for appointing a deputy representative;

(e) respecting matters relating to the establishment of a multidisciplinary team, including appointment criteria and procedures;

(f) specifying terms and conditions that must be included in an information-sharing agreement;

(g) defining any word or expression used but not defined in this Act;

(h) respecting any matters that are necessary for the orderly transition from the application of the *Office of Children and Youth Act* to the application of this Act.

(3) In making regulations under this section, the Lieutenant Governor in Council may do one or more of the following:

(a) in relation to regulations under subsection (2) (a), prescribe different services or programs for the purposes of different provisions of this Act;

(b) in relation to regulations under subsection (2) (b), prescribe different designated services for the purposes of different provisions of this Act;

(c) in relation to regulations under subsection (2) (d), set different qualifications or different procedures for the appointment of deputy representatives carrying out different functions;

(d) make different regulations for different persons or classes of persons;

(e) make different regulations for different geographical areas in British Columbia;

(f) delegate a matter to a person;

(g) confer a discretion on a person.

Review of the Act

30 To determine whether the role and functions of the representative described in section 6 are still required to ensure that the needs of children are met, the standing committee, within 5 years of the coming into force of this Act, must undertake a comprehensive review of this Act or a review of portions of this Act.

Consequential Amendments

Child, Family and Community Service Act

31 *Section 70 of the Child, Family and Community Service Act, R.S.B.C. 1996, c. 46, is amended*

(a) in subsection (1) (m) by striking out ", the child and youth officer or a person employed or retained by the child and youth officer under the *Office for Children and Youth Act*, " **and substituting "**, the representative or a person employed or retained by the representative under the *Representative for Children and Youth Act*, "**,**

(b) in subsection (1) (n) by striking out "the child and youth officer under the Office for Children and Youth Act," and substituting "the representative under the Representative for Children and Youth Act," and

(c) in subsection (3) by striking out "This section does not apply" and substituting "This section, except with respect to the Representative for Children and Youth as set out in subsection (1) (m) and (n), does not apply".

32 Section 93 is amended by adding the following subsection:

(4) Subject to the regulations, a director may review any matter relating to the provision of services under this Act for any of the following purposes:

- (a) to monitor the director's performance in the provision of the service;
- (b) to monitor the performance of any person or agency in the provision of the service;
- (c) to improve the provision of services under the Act;
- (d) for public accountability.

33 Section 101.1 (1) (b) and (2) (b) is amended by striking out "such a review." and substituting "a review under section 93 (3) or (4)."

34 Section 103 (2) is amended by adding the following paragraph:

- (r.1) specifying for the purposes of section 93 (4)
- (i) different types of reviews for different types of matters, and
- (ii) time limits and processes for different types of reviews; .

Freedom of Information and Protection of Privacy Act

35 Schedule 1 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended in the definition of "officer of the Legislature" by striking out "under the Public Service Act or the Ombudsman;" and substituting "under the Public Service Act, the Representative for Children and Youth or the Ombudsman;".

36 Schedule 2 is amended by striking out the following:

Public Body: Office for Children and Youth
Head: Child and Youth Officer .

Office for Children and Youth Act

37 The Office for Children and Youth Act, S.B.C. 2002, c. 50, may be repealed by regulation of the Lieutenant Governor in Council.

Commencement

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

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