

REPORT ON CHILD ADVOCACY AND COMPLAINT RESOLUTION PROCESS

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1.0 INTRODUCTION

1.1 Purpose of Review

This review of the role of advocacy and the complaint resolution process in the provision of child welfare services in BC came out of the appointment of Mr. Ted Hughes, Q.C., to conduct an independent review of the child protection system in British Columbia in December, 2005. The terms of reference for this review included:

To examine and make recommendations to improve:

- the system for the review of child deaths, including how the reviews are internally addressed,
- advocacy for children and youth, and
- monitoring of the government's performance in protecting and providing services for children and youth in British Columbia.

This paper does not make recommendations for the future, but only presents information on child protection, advocacy and complaint resolution processes set in an historical context, and information on the approach that other jurisdictions have taken with respect to these issues. It also presents a summary of interviews and written submissions, and provides some analysis of important issues that need to be considered when making recommendations for the future.

1.2 Approach

This review included:

- a review of the history of development of child protection in the province, child advocacy and the complaint resolution process for child protection matters;
- the current state of child advocacy and the complaint resolution process;
- interviews with over 20 people and review of many written submissions;
- review of literature on the subject of advocacy and complaints management;
- identification of some of the issues around providing child advocacy services, and options for improving them;
- a review of the current state of the complaints resolution process, identifying some of the issues, and possible areas of improvement; and,
- identifying options for providing advocacy and complaint resolution processes in the future.

1.3 Organization of Paper

This paper is organized into seven sections, as follows:

- Section 1 – Background
- Section 2 – Historical Context
- Section 3 – Provincial Jurisdictional Review
- Section 4 – International Jurisdictional Review
- Section 5 – Summary of Interviews and Review of Written Submissions
- Section 6 – Framing the Issues – Discussion and Analysis of Options
- Appendices

1.4 Context for Review

This review was completed within a very short timeframe which limited the ability to complete an in-depth analysis of the issues, and identify and explore possible options. In

addition, the whole area of child advocacy by legislated government bodies is a more recent development. Many offices in other jurisdictions are relatively new and very few have been subjected to independent evaluations, so an assessment of their effectiveness in general is not possible. One exception to that is the Norwegian Ombudsman Office, which has been in existence since 1981 and where its work has been evaluated. The conclusions indicate that the Norwegian Ombudsman for Children has:

- successfully raised the profile of children on the political agenda;
- enhanced acceptance of children as holders of human rights; and,
- been instrumental in improving the position of children in law.

Because the field is relatively new, best practices based on well constructed evaluations are not available, and in particular, there are no established best practices for scope of mandate and function of an advocates office, or management approach. There is literature on advocacy theory and philosophies, such as the concept of “best interests of the child”, and varying definitions of advocacy, but this literature was of limited value in terms of the issues under discussion.

This points to the need for the development of an evaluation framework for child protection issues that will support an ongoing evaluation of the impact of advocacy services and the effectiveness of complaint resolution processes.

2.0 HISTORICAL CONTEXT

This historical summary is presented using the timeframes created by the release of the report by the Honourable Judge Thomas J. Gove (the Gove Report) in November 1995, and the Core Services Review process initiated by the government in the summer of 2001.

The Gove Inquiry was an Independent Commission of Inquiry appointed by the Province of British Columbia into the adequacy of the services, policies and practices of the Ministry of Social Services as they related to the apparent neglect, abuse and death in 1992 of Matthew Vaudreuil.

The Core Services Review was an internal government process initiated by the newly elected government in 2001 and was intended to give government ministries and agencies an opportunity to "rethink" fundamental assumptions about mandates, responsibilities, programs and services. Every government service was evaluated to see if it was:

- serving a compelling public interest;
- affordable within the fiscal environment;
- effective, efficient and accountable; and
- legitimate and an essential role for the provincial government.

This information is presented in the context of both a general description of the legislative framework and the program delivery structure. It also looks more closely at the advocacy support and complaint process in place at the time, and its evolution. It touches only on child protection aspects and does not include information on benefits to children and families through legislation such as the former BC Benefits legislation and the existing BC *Employment and Assistance Act*. It also does not look at related legislation such as the *Adoption Act*, *Family Relations Act*, or other legislation which impacts on children's rights in another context. The information on the Pre-Gove history is taken largely from the Gove Report.

2.1 Pre-Gove Report (1901 to 1995)

2.1.1 LEGISLATIVE FRAMEWORK:

- *Infants Act*, 1901

Child protection services in BC were first addressed through the *Infants Act* in 1901. The *Infants Act* established the authority for the apprehension of orphaned or neglected children and the transfer of guardianship to the province. It also incorporated children's aid societies to care for wards of the state. This Act was repealed in 1939, when the *Protection of Children Act* was introduced.

- *Protection of Children Act*, 1939

During the 1930s and 1940s, the province gradually took responsibility for social services throughout the province. Prevention was added to the role of children's aid societies through an amendment to the *Infant Act*, which was replaced by the *Protection of Children Act* in 1939. The *Protection of Children Act* was amended in 1967 to require anyone suspecting child abuse to report their concerns to the Superintendent of Child Welfare. It was repealed by the *Family and Child Service Act* in 1981.

- *Community Resources Board Act*, 1974

In 1974, the *Community Resources Board Act* legislated a province-wide integrated system of social services to children and families, to reflect the service delivery structure in place at the time. The Act called for regional and community resource boards, with locally elected members. This Act was repealed in October 1996 when the *BC Benefits (Income Assistance) Act* was enacted.

- *Family and Child Service Act*, 1981

Enacted in 1981, this legislation came about as a result of a review of the *Protection of Children Act*. While it introduced short term and special care agreements and gave social workers additional powers when a child was in immediate need of protection, it was criticized for failing to recognize the rights of children, to clarify when a child could be found in need of protection, provide a child advocate role and make preventive service mandatory. This Act was repealed in 1996 with the enactment of the *Child, Family and Community Service Act*.

- *Child, Youth and Family Advocacy Act*, 1994 and *Child, Family and Community Service Act*, 1996

A public consultation process was undertaken to solicit public opinion about child protection, and make recommendations for changes to improve provincial legislation (Community Panel Family and Children's Services Legislation Review, 1991). An aboriginal committee undertook a similar process in their communities. The two panels presented their findings in 1992 (*Making Changes: A Place To Start*; and *Liberating Our Children: Liberating Our Nations*). A white paper process resulted in two new pieces of legislation, the *Child, Youth and Family Advocacy Act*, enacted in 1994, and the *Child, Family and Community Services Act*, in 1996.

The *Child, Youth and Family Advocacy Act* called for the appointment of an independent advocate for children youth and families who were receiving services under the *Family and Community Service Act*.

The *Child, Family and Community Service Act* provided for a more elaborate definition of circumstances in which children need protection and defined the rights of children and youth in care. It espoused the principles that children should remain with their families and that whenever possible prevention and family support services should be given priority over apprehension.

2.1.2 PROGRAM DELIVERY

Programs for children in need have evolved throughout the 20th century, delivered first through children's aid societies, and eventually through a complex structure of non-profit agencies, municipal and provincial government programs.

In the early part of the twentieth century, limited services were provided primarily through children's aid societies in Vancouver and Victoria. During the 1930s, the government gradually took direct responsibility for delivery of child protection and welfare service in remote and rural areas. In the 1940s, services were provided by the Department of Health and Welfare, through local offices that were responsible for income assistance, services to children with mental illness, and child welfare and adoption services. Services expanded throughout the 1950s and 1960s. The Department of Health and Welfare was split into two departments, and the Department of Social Welfare (later renamed the Department of Rehabilitation and Social Improvement) took on responsibility for child welfare services.

In the 1970s, child protection services were delivered by the provincial government (Department of Human Resources). With the introduction of the *Community Resources Board Act* in 1974, services were coordinated through regional and community resource boards, with locally elected members. Outside of Vancouver, community resource boards delivered services by allocating provincial funding to local non-profit social service agencies, through the Community Grants Program. In Vancouver, services were coordinated by the Vancouver Resources Board, comprised of members from 14 local community resource boards. The Board delivered a range of child protection service to Vancouver residents through decentralized service teams. Family support and other prevention services were supplied through a mix of government offices and contracted agencies. Guardianship remained the responsibility of the provincial government and was provided through foster care. These boards were disbanded by 1977 by the government of the day, in favour of a more centralized approach to service delivery through the Ministry of Human Resources. Services to children were expanded during the 1970s to include home support and respite services, special needs daycare, and specialized educational and therapeutic services. Family support workers were added to the system.

In the late 1970's, informal Children In Crisis Committees (CICs) were formed in an attempt to better coordinate services to children with special needs. In 1979, these committees were replaced with Inter-Ministry Children's Committees (IMCCs), responsible for all inter-ministry planning and services for hard to serve youth between 12 and 19. However, they had no funding and were directed not to impact ministry internal policies and programs.

In 1983, provincial restraint measures resulted in the elimination of many social worker positions and closure of group homes and treatment centers for troubled children. The result was a shift of prevention and family support services from government to private agencies. Access to services was coordinated through a single office in most communities. Direct government involvement became more limited to crisis intervention.

This use of contracted resources increased with the deinstitutionalization of the mentally ill and their placement in community-based homes.

In 1988, there was an organizational shift from single community offices to separate offices specializing in 3 program areas:

- Income assistance and employment
- Family and children's services
- Services for the mentally ill.

This was a new model of service delivery intended to recognize the need for more specialized services. A new layer of management was introduced to administer service contracts and set district office standards. The number of district offices increased, allowing greater access to supervisors for training and case consultation. This led to an expansion of community-based resources for the mentally ill, and additional staff for income assistance, but in a loss of social worker positions in many Children and Family Services district offices, particularly in the lower mainland.

Responsibilities at the executive level also changed for overall responsibility for the Family and Children Services Program, from a superintendent to an assistant deputy minister. The superintendent retained responsibility for the overall administration of the *Family and Child Service Act*, for providing assistance and advice on individual cases, and for guardianship for all children-in-care of the ministry. The position was also responsible for setting standards, delegating powers and duties to execute child welfare services, and for monitoring provision of those services.

In 1988, the Ombudsman expressed his concern about the confusion surrounding the role of IMCCs, and the lack of funding and restrictions placed on them. The Ombudsman's report on the death of a youth in care in 1990 at the Eagle Rock Youth Ranch again highlighted the need for improvements in the way that eight ministries delivered child-related services. This report led to the establishment of the Child and Youth Secretariat in 1990. Its mandate was to:

- monitor services and ensure integrated approaches to policy development across ministries;
- maintain contact with the Ombudsman's Office;
- identify and resolve issues of mutual concern to all ministries involved with child welfare;
- support the work of the IMCCs by supporting communication between the IMCCs, the Secretariat, and communities; and
- review child and youth services and making recommendations to the Deputy Ministers Committee on Social Policy.

IMCCs were replaced with regional and local child and youth committees (CYCs). CYCs were responsible for identifying, evaluating and resolving local service delivery problems, reviewing policy and planning issues, facilitating case management and providing access to resources. They reported to the regional offices, and annually to the Secretariat.

Successive Ombudsman reports through 1992 to 1994 reported little progress to achieving an integrated delivery of services. In the 1994 report, the Ombudsman reported that the Secretariat had failed in its efforts. An internal evaluation of the Secretariat led to structural and process changes within the Secretariat to try to address the ongoing issues. These changes included a clarification of the Secretariat's mandate, and sufficient authority and resources to coordinate local and regional CYCs. The Secretariat reported to the chair of an assistant deputy minister's committee (ADM

Committee). The ADM Committee reported to a Deputy Ministers Committee comprised of deputy ministers from eight ministries, tasked with providing leadership and making recommendations about service and program integration. The Secretariat could not provide direct funding to CYCs, but could make recommendations to ministries to support pilot programs.

The 1995 Gove Report concluded that the Secretariat model was fundamentally flawed because it perpetuated the fragmentation of services to children among eight ministries.

2.1.3 ADVOCACY AND COMPLAINTS PROCESS

Advocacy:

Child advocacy was not a provincial service prior to 1995. The Ombudsman had recommended the creation of an advocate for children and youth in his report issued in 1990, and again commented on advocacy in 1993 and 1994. There were some efforts to provide child advocate services at the local government level. The City of Vancouver had a Child and Youth Advocate. This position was created in 1989 as a result of the Mayor's Task Force on Children. The mandate of the Advocate was to work both inside city hall and in the community to ensure that the interests of young people in Vancouver are given full and appropriate consideration.¹

Other child protection advocate services may have existed in the non-profit sector or other municipal governments, although this has not been explored.

Complaints Process:

Prior to the introduction of the *Child, Family and Community Service Act* in 1994, a formal complaint process did not exist. Complaints were handled informally by workers and supervisors.

2.2 Post-Gove Report (1995 to 2001)

2.2.1 LEGISLATIVE FRAMEWORK (1995 TO 2001)

When the Gove Report was made in 1995, the *Child, Family and Community Service Act* and *Child Youth and Family Advocacy Act* had been introduced, although the *Child, Family and Community Service Act* was not fully in force. The *Children's Commission Act* was introduced in 1997.

- *Child, Family and Community Service Act*, 1994

This Act was passed by the legislature in 1994, and was fully in force by February 1996. It was child-centred legislation, providing a set of guiding principles for the delivery of family and child services and establishing the criteria for ensuring that the best interests of the child prevails. Voluntary supportive services were established to encourage families to identify problems and to get help before a crisis occurs. It increased flexibility in the court process, entrenched rights for children in the care of the ministry, supported services for street youth in crisis, and provided an external review process.

It was amended in 1995 to strengthen the principles underlying the Act by declaring that the safety and well-being of a child was the paramount consideration in the administration and interpretation of the Act. It was also amended to allow the courts to

¹ <http://www.city.vancouver.bc.ca/ctyclerk/cclerk/990729/pe6a-c.htm>



add a supervision order to any temporary custody order at the time that the custody order is made. Further amendments clarified the circumstances under which a director could seek a continuing custody order at a child protection hearing, and extending the maximum time limits for temporary custody orders; requiring mandatory disclosure of information at child protection hearings by all parties involved; and creating a mandatory process to review complaints and the exercise of the director's duties. In addition, the amendment clarified the child protection responsibility of members of the public.

It was amended again in 1997 to further implement recommendations made by the Gove Report to give social workers more flexibility to protect children in the least disruptive way possible, to protect children and families who challenge ministry decisions about their lives and to encourage a greater level of service integration with a clearer focus on prevention.

Further amendments in 1999 included:

- clarifying the rights of parents and others to be notified of child protection proceedings and improved the consent order provisions;
- providing an alternative to youth between 16 and 19 years old who are out of home and at risk being brought into care of the province by enabling the ministry to enter into an agreement directly with a youth to provide services in exchange for actions by that youth (e.g. attending school or entering drug rehabilitation); and,
- giving social workers and police the power to protect children and youth from sexual exploitation.

– *Child, Youth and Family Advocacy Act, 1994*

This Act was introduced into the legislature in 1994, and was fully in force by September 1995. The Act was amended in 1995 to incorporate three of Judge Gove's recommendations: reporting powers of the advocate were expanded; people who complained, gave evidence, or otherwise assisted in an investigation were better protected; and changes were made to the advocate's salary and superannuation plan. It was amended again in 1997 to reflect the introduction of a Children's Commissioner.

The purpose of the Act was to establish an independent officer of the Legislature to provide advocacy services for children, youth and families receiving services under the *Child, Family and Community Service Act*.

It was repealed by the *Office for Children and Youth Act* in September, 2002.

– *Children's Commission Act, 1997*

This Act was introduced in 1997 to ensure that key aspects of the child protection systems of government were monitored and that the quality of service was assessed and reported on publicly. It was independent of the Ministry for Children and Families. Reports generated by the Commission were directed to the Attorney General.

The Commission was responsible for reviewing all child deaths in the province, investigating those that warranted closer attention and making systemic and specific recommendations as required, which included measures to ensure that the rights of children to life, survival and development were protected.

The Commission also set standards for and monitored the Ministry for Children and Families' regional complaint resolution process. The Children's Commission, Tribunal

Division, had the power to review complaints once the ministry's internal complaints process had been exhausted.

The Act was repealed by the *Office for Children and Youth Act* in September, 2002.

2.2.2 PROGRAM DELIVERY – GENERAL (1995 TO 2001)

The Gove Inquiry recommended that provincial responsibility for all child welfare services in numerous ministries be brought together into a new Ministry for Children and Youth. This recommendation was accepted and the Ministry for Children and Families (MCF) was formed in 1996. Existing programs serving children, youth and families from the Ministries of Education, Health, Social Services, Attorney General and Women's Equality were transferred to the newly created MCF.

A Transition Commissioner was appointed to recommend legislative changes and to make organizational and structural changes necessary to create the new child welfare system recommended in the report. In addition, the Ombudsman was asked to monitor government's implementation of the recommendations of the Gove Inquiry. In 1998, the Ombudsman released *Getting There*, an audit of government's response to the more than one hundred recommendations of the Inquiry.

Within the newly created Ministry for Children and Families, the Child Protection Division had responsibility for the development of policies, standards and programs, and for the overall quality of services provided to children and families under the *Child, Family and Community Service Act* and *Adoption Act*, for adoption, child protection and guardianship services. The Division also had the responsibility to assist in building the capacity of Aboriginal agencies delegated to deliver services under the legislation, and to ensure the quality of those services. The *Child, Family and Community Service Act* named the "director" (designated by the minister) as the primary person responsible for fulfilling the powers and duties set out in the Act.

The authority of the director was delegated to ministry staff (social workers) who provided child protection services in 20 regions. Social workers reported directly to the provincial director, not to the regional director.

The Gove Report had recommended the devolution of regional authority to regional elected boards. This recommendation was not implemented. Instead, regional issues were to be addressed through the creation of 20 "Regional Operating Agencies", administered by a Regional Operating Officer (ROO), who reported directly to the Deputy Minister.

Each region had a least one child abuse team, and a child protection manager and child protection consultant. Community organizations were also contracted to provide prevention and support services, including residential and counseling services, to children and families. In addition, rapid response teams provided temporary assistance to regions if their capacity of child protection services in that region were exceeded. The team consisted of two child protection supervisors and eight child protection workers.

2.2.3 ADVOCACY (1995 TO 2001)

Youth Advocate:

The first Child and Youth Advocate for BC, Joyce Preston, was named in March, 1995. The appointment was for six years, and required that annual reports be tabled with the Speaker of the Legislative Assembly at least annually. The advocate had no authority to act as legal counsel. However, she did have the power to investigate and review a case,



initiate and participate in processes to review decisions (or assist children or their families to do the same), conduct interviews with children, youth and families, inform the public about the needs and rights of children, make recommendations about legislation policies and practices, and make agreements to ensure that advocacy services were provided. She could resolve matters through the use of negotiation, conciliation, mediation or other dispute resolution processes.

Section 2 of the *Child, Youth and Family Advocacy Act* outlined the duties of the advocate:

“The office of Child, Youth and Family Advocate is established

- (a) to ensure that the rights and interests of children, youths and their families relating to designated services are protected and advanced and that their views are heard and considered,
- (b) to ensure that children, youths and their families have access to fair, responsive and appropriate complaint and review processes at all stages in the provision of designated services,
- (c) to provide information and advice to the government and communities about the availability, effectiveness, responsiveness and relevance of designated services to children, youths and their families,
- (d) to promote and coordinate in communities the establishment of advocacy services for children, youths and their families, and
- (e) to perform any other functions assigned to the advocate by an enactment.”

In her first annual report to the Legislative Assembly, the Advocate outlined her responsibilities as:

- Ensuring that children and youth are fully informed about decisions which will affect their lives, and are listened to respectfully by government and given primacy in the making of such decisions.
- Supporting communities in the development of local advocacy services by establishing a system in which children and youth, people who are close to them, and local agencies and organizations have access to the information and support they need in order to practice self-advocacy or provide community based advocacy.
- Studying and responding to specific issues affecting children and youth who:
 - o are Aboriginal and are in need of services
 - o have visible or invisible disabilities
 - o have sexually intrusive behaviours
 - o are involved in Family Court proceedings and/or are in need of legal representation.
- Promoting comprehensive services to youth as they make the transition to adult responsibilities.
- Working towards an integrated system of responsive, coordinated, user-friendly, high-quality services for children and youth.
- Facilitating the creation of a network of youth centres throughout the province.
- Responding to, and keeping track of, both individual requests for advocacy and systemic issues.
- Providing children and youth and their families with full and clear information about their rights, including their right to have service providers' decisions reviewed.



- Establishing just and reasonable procedures for dealing with complaints about services provided and for reviewing decisions.
- Clarifying the roles of the various bodies responsible for reviewing the decisions of service providers.
- Ensuring that the current needs of children and youth are met while various government services undergo transitions.
- Recommending amendments to the *Child, Youth and Family Advocacy Act* to reflect our focus on advocating on behalf of children and youth.
- Extending the mandate of this office by adding to the list of Acts and services designated under the *Child, Youth and Family Advocacy Act*, so as to expand the scope of our services.
- Exchanging information with people working in similar advocacy initiatives throughout the country and working in partnership with groups currently providing advocacy services for children and youth in BC.
- Being accountable both to the government and to the general public.

The role of the Advocate was initially limited to the *Child, Youth and Family Service Act*. This role was expanded in 1997 to the *Adoption Act* and three designated services funded under the two statutes. Both the Advocate and Ombudsman continued to recommend that Advocate services be expanded to cover all child or youth receiving or in need of services from the ministry. In her second annual report, the advocate noted that almost 40% of calls were regarding concerns that were outside of her mandate.

An advocate was provided where requested during the ministry's internal complaint resolution process. The advocate was also available if the complaint was not resolved and went to the Children's Commission or tribunal process. This was outlined in a brochure produced by the Ministry outlining the complaint resolution process.

Annual reports by the Advocate became increasingly critical of the lack of progress being made by government in meeting the needs of children, youth and families. In her special report in 1999 called "Not Good Enough", the Child, Youth and Family Advocate called for a halt to the erosion of services and a renewed effort to provide the needed services. In 2000, she reported no substantial response to the concerns she had outlined in her 1999 report. The last report by the Office (2001) covered a 15 month period to complete the reporting out on the work of the Office to its final conclusion.

Children's Commissioner:

The role of the Children's Commission was not related to advocacy for a specific child, but rather to monitoring the effectiveness of services for children and youth and making recommendations (or advocating) for change. In addition, the Commission ensured that children and youth were respected and treated fairly, had access to needed services, and that these services were responsive to their needs.

More specifically, in terms of advocating for a better system, the Commission:

- monitored the planning of services for young children and youth in government care to ensure adequate support and resources were being provided; and,
- reviewed the circumstances leading to the death of any child or youth and reviewed the cases of children and youth in government care who sustained critical injuries, and made recommendations for change that could help children and youth in similar situations.

Judge Gove recommended that the Children's Commissioner be given responsibility for reviewing reports of deaths and serious injuries of all children and youth in the care of the



province or receiving child welfare services. The responsibilities and role of the Children's Commissioner in child death reviews or injuries reviews is the subject of a different paper, and is not explored further here.

2.2.4 COMPLAINTS PROCESS (1995 TO 2001)

2.2.4.1 Child and Family Review Board

The complaint process changed with the introduction of the *Child, Family and Community Service Act* from a largely informal internal process to one where, in addition to the internal review process, a more independent body could be requested to review a case. In addition, the Ombudsman could be asked by a complainant to review a particular case. Therefore a complaint could involve three separate agencies – the Ministry of Children and Families; the newly created Child and Family Review Board; and the Ombudsman Office.

The *Child, Family and Community Service Act* required that the minister establish the Child and Family Review Board. The Board reported annually to the minister on the work of the Board.

The purpose of the Board was to review complaints of breach of rights given by the Act to children in care, and any other matters referred to the Board by the minister or specified by regulation. The Board had the protection, power and authority of sections 12, 15 and 16 of the *Inquiry Act*.

- the same protection and privileges given to Supreme Court judges for actions (or inactions) taken by them in the course of their duties;
- the power to summon witnesses, and require that witness to produce evidence; and,
- the power to enforce summons and orders for contempt of proceedings.

The minister could appoint up to 15 members of the Board, for terms of up to three years. Appointments could be renewed. Panels of up to three members reviewed complaints or other matters to each panel. Orders/decisions of each panel had the same authority as orders of the Board.

Complaints could be made by the child, its parents, the Child, Youth and Family Advocate, or any other person representing the child. The Board was required to notify the director that they had been requested to review the complaint. The director could attempt to resolve the complaint within 30 days of that notification. If the complaint remained unresolved, and the subsequent review by the Board determined that the child's rights had been breached, the Board could order the director to correct the breach, and report back to the Board on steps taken to comply with the order. Copies of the decision of the Board were to be provided to the child, the person requesting the review, and the director.

The duties of the Child and Family Review Board were transferred to the Children's Commission by 1998, and those sections of the *Child, Family and Community Service Act* establishing the Board were repealed.

2.2.4.2 Children's Commission:

The Gove Report recommended the creation of an independent Children's Commissioner. This position was created when the *Children's Commission Act* was passed in 1997. The Commissioner reported to the Legislative Assembly through the Attorney General. First reading of Bill 23 described the powers of the Children's Commission as:

- “1. To monitor the development and implementation of internal review processes across ministries and agencies of government to ensure they are respectful, timely, effective and child-centre. We will start with the Ministry for Children and Families.
- 2... to provide a comprehensive avenue for external complaints for children. This will eventually cover all services provided by the Ministry for Children and Families -- corrections, healthcare and child protection. This comprehensive complaint process will ensure timeliness, accessibility and accountability.
3. To ensure all children in care have a plan that meets their needs.
4. To investigate critical injuries that occur when children are receiving designated services.
5. To review all child fatalities and investigate any that are suspicious and unusual, through an investigation and multidisciplinary process. “

The Children’s Commission acted on complaints received from children and youth where a young person’s complaint was not resolved through the Ministry’s internal process. If the complaint could not be resolved informally, the Commissioner could decide to refer the complaint to an independent tribunal. Members of the tribunal were appointed by the Attorney General. Tribunals did not have the power to overturn decisions of the director, but rather made recommendations based on their review of the case.

2.2.4.3 Ombudsman

The Office of the Ombudsman, governed by the *Ombudsman Act*, can investigate a complaint about services provided by a public body. The Ombudsman reports annually and makes special reports or comments to the Legislature on specific issues that require remedial action. The Ombudsman is an officer of the Legislature. He is responsible for making sure that administrative practices and services of public bodies are fair, reasonable, appropriate and equitable. He can conduct confidential investigations and to protect complainants against retribution. The Ombudsman may summon an individual and examine under oath those able to give information relevant to an investigation.

The Ombudsman could, if requested by a complainant, examine complaints not resolved by the Office of the Child, Youth and Family Advocate or investigated by the Children’s Commission. The Ombudsman could not act as an advocate for complainants. He could advise complainants about what steps to take with respect to a complaint. He could investigate, make recommendations, and negotiate resolutions. He could not reverse any decisions. The Office of the Ombudsman included a team of investigators for issues relating to children and youth.

2.3 After Core Review (2002 to present)

2.3.1 LEGISLATIVE FRAMEWORK:

– Child, Family and Community Service Act

In 2002, the Act was amended to clarify the duty to report child protection concerns. The amendment provided consistency between the duty to report and what social workers were required to respond to under the Act:

- o clarified what must be reported to child protection social workers for assessment and investigation (limiting the requirement of a person to report abuse or neglect which arises from acts or omissions to the child’s parent or guardian);



- allowed the director to apply to the court to transfer the custody of a child in care to a person other than the child's parent before considering foster care (e.g. extended family and community placement resources) to allow children to return to their communities; and,
- ensured that privacy rights of children and families receiving child welfare services were protected.

- Office for Children and Youth Act.

On February 7, 2002, Cabinet approved the Attorney General's recommendation that the Children's Commission and the Office of the Child, Youth and Family Advocate be eliminated and that an Office for Children and Youth be established to consolidate key oversight and advocacy functions. The *Children's Commission Act* and the *Child, Youth and Family Advocacy Act* were repealed.

The Child and Youth Officer reports annually to the legislature through the Attorney General. The Child and Youth Officer can make a special report to the Attorney General about systemic issues affecting children and youth in British Columbia. This report can also be made public.

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

- services provided under the *Adoption Act* and the *Child, Family and Community Service Act*;
- early childhood development and care services;
- mental health services for children and youth;
- addiction services for children and youth;
- youth justice services;
- services for youth and young adults during transition to adulthood;
- community living support provided under the *Community Living Authority Act* to children and youth.

2.3.2 PROGRAM DELIVERY – CURRENT STATE

Child protection services across the province are provided through local ministry offices in five regions. The child protection staff is supported by the provincial office of the Child and Family Development Division. Services are delivered through a regional or community structure, and through contracted resources.

Under the *Child, Family and Community Service Act*, the Minister designates the Director, who in turn delegates the provision of child protection services across the province to child protection social workers.

The Act requires that anyone who has reason to believe that a child may be abused, neglected, or is for any other reason in need of protection, must report it to the Director or a delegated social worker. These reports are investigated by social workers, who take the most appropriate action that is least disruptive for the child. These actions may include:

- providing or arranging the provision of support services to the family
- supervising the child's care in the home, or
- protecting the child through removal from the family and placement with relatives, a foster family or specialized residential resources.

Social workers also have the delegated authority of the Director to approve foster homes for children who come into the care of the ministry. Resources such as group homes, specialized residential facilities, assessment resources, and respite resources are developed to serve children and youth in care.

According to the 2004/05 Annual Report, the number of children in care, which dropped from a high of 10,775 in June 2001, was stable throughout 2004/05. As of March 2005, there were 9,071 children in care. Forty-eight per cent of all children in care were Aboriginal.

2.3.4 ADVOCACY – CURRENT STATE

In 2001, as part of the Core Services Review initiative undertaken by the new government, Jane Morley, QC, was asked to conduct a review of the core services of the Children's Commission, and to consider how those services could be provided most effectively and efficiently. As a result of her review, a new office was created which took elements of the former Child and Youth Advocate and Children's Commissioners responsibilities, and transferred other aspects of service delivery by the Children Commissioners to the Coroners Office. The intent, as outlined in the Core Services Report, was that the CYO would, "for the most part, not provide direct individual advocacy services to children and families, but will have an important role in removing barriers to children advocating for themselves and family and interested community members advocating on behalf of children."

The Office of the Child, Youth and Family Advocate provided input into the core service review, as it pertained to the operations of the Advocate's Office. This input focused on the value of having an independent voice for child the youth, the importance of individual, community and systemic advocacy, and the need to support individuals and communities to be their own best advocates.

As a result of the review of the services provided by the Advocate, Children's Commissioner, the Ombudsman, the Coroner, and MCFD as they related to child protection issues, the decision was made to transfer the key function of the Advocate Office to the new office (Child and Youth Officer) and a transition team was established to assist in this change process. The Advocate Office closed in the summer of 2002. Child advocacy services are now provided by the Child and Youth Office.

In general terms, the task of Child and Youth Officer was to provide an informed and independent focus on government's child welfare policy. The Child and Youth Office provides the following services:

- supports self-advocacy by providing information about rights, policies, relevant government services and available complaints processes;
- advice and coaching on effective self-advocacy;
- provides relevant written materials;
- connects individuals with natural or community advocates for ongoing support
- assist in finding a local advocate or support person; and,
- in some situations, directly advocate on behalf of a child or youth to ensure that their views and interests are heard and considered in decision-making.

Under section 70 of the *Child, Family and Community Service Act* children and youth in care must be informed about the Child and Youth Officer and assisted in contacting the Office.

2.3.5 COMPLAINTS PROCESS – CURRENT STATE

The creation of the Child and Youth Officer (CYO) and the elimination of the Child, Youth and Family Advocate and Children's Commissioner placed the emphasis for complaint resolution predominantly in the hands of the Ministry at the local level. The intent was that the complaint resolution process within the Ministry would respond to issues and if that failed, the Ombudsman would act as the sole external review authority.

The complaints resolution process is therefore predominantly an internal process to the Ministry. Each region has developed their own process, using guidelines or standards that were based on the recommendations of an internal review process team, and a report by the Ombudsman in 2001 "Developing An Internal Complaint Mechanism". The vision, as outlined by the Core Services Report, was described as follows:

"The goals of a complaints process should be to achieve the best outcome in the circumstances of the particular complaint; and to improve the services provided by MCFD in the future. An effective complaints process should allow the perspectives of those who are affected by a decision of MCFD to be fully taken into account in the decision-making and leave those who have brought forward the complaint feeling respected and heard by government. The process of dealing with the complaint should improve, rather than undermine, the ongoing relationship between the front line worker and the children and families involved."

Generally speaking, the process is an escalating review within the regional structure. A complainant is instructed to first try to resolve the issue with the social worker. If it cannot be resolved at that level, the complainant can ask to have the team leader review the issue. A complaint consultant oversees the review process. If unresolved, the local Manager will review the dispute, and make a decision. Complainants must be informed of the decision in writing within a total of 60 working days. If a complainant is still unsatisfied with the decision, the complainant is directed to the Ombudsman's Office, the Child and Youth Office, the Deputy Minister, or community organizations.

While all regions follow the general approach of escalating review of a complaint, complaint resolution processes vary between regions in terms of resourcing, structure, and use of mediation.

All regions have the same definition of who is eligible to make a complaint:

- Any person or someone representing a person who is receiving or believes him/herself eligible to receive services from the Region;
- A family member, caregiver or a person acting in a parental role on behalf of a child or youth receiving services or who is believed eligible to receive services;
- A group of individuals or agencies who receive direct services from the ministry, other than by contract;
- A foster parent disputing the quality of services or eligibility for services of a child in care. For all other issues, foster parents must use special protocols, such as the protocol for resolving issues between Foster Parents and ministry staff.

The complaint process is intended to resolve issues arising from services being provided by the Ministry to its clients, and social workers and contractors can encourage clients to use the complaint resolution process. Contractors can also advocate for a client if the issue is unrelated to the services they are contracted to deliver.

The Ministry can refuse to hear complaints on certain grounds (general matters related to legislation or policy, budget decisions, labour or personnel issues, criminal activity, or

where legal action is in progress). Contractors cannot use the system to bring complaints about their contracting relationship with the Ministry, as there are other processes in place to deal with these types of contract issues. For example, complaints by foster parents are covered by the **Protocol for Resolving Issues Between Foster Parents and Ministry Staff**.

Complaints about contracted services are encouraged to be resolved by the contractor. However, if the complaint is regarding legislated rights, or the complainant or contractor asks for involvement by the Ministry, then the complaint is handled through the complaint resolution process.

Issues that are eligible for the complaint resolution process include both administrative fairness and case related issues. The distinction is important in that the Complaint Resolution Officer may escalate a Managers decision on administrative fairness within the Ministry, while case related issues are not escalated.

Issues of administrative fairness include:

- Treatment with dignity and respect
- Access to adequate communication, and information
- Access to independent impartial review
- The opportunity to be heard by decision-makers
- The opportunity to respond to information about oneself
- The opportunity for inclusion in planning
- Notice of outcome of decision-making and reasons for decisions
- Timeliness
- Clarity of roles
- Reasonable expectation of consistency
- The right to advocacy
- Adherence to legal authority to act
- Safety from reprisals
- Cultural responsiveness and inclusiveness

Case related issues include:

- Case planning and decision-making
- Quality of care
- Adherence to legislation and policy
- Eligibility for services
- Access to services
- Clients' rights under legislation, regulation, or policy
- Section 70 of the *CFCSA*—rights of a child in care.
- Issues involved in an on-going legal action, but only if the complaint is not related to the legal action and/or issues before or decided by the court.

Process:

The internal complaint resolution process is the formal process to provide clients with a way to make complaints and bring forward concerns about services in such a way that it allows them to be heard, encourages the region to evaluate its own actions and improves the relationship between the region and its clients. While there are minor differences in the process between regions, they are based on the principles of administrative fairness, Ministry Standards for an Internal Complaints Resolution Process, and the recommendations of the Office of the Ombudsman for developing an internal complaint

mechanism. Four of the five regions detailed policies were examined and a brochure was available for the fifth region.

There are differences in staffing and organizational structures that may contribute to variations in regions or the emphasis and value placed on the process. The process to resolve an issue is kept at the local level, with the local Manager given the final authority to make a decision (with the exception of the Interior – see below). There are also differences in the extent to which clients are made aware of the complaint resolution process. Regions vary in the names given to the staff positions, for example, some consultants are called “Complaint Resolution Consultant” or “Dispute Resolution Consultant” or “Quality Assurance Manager”. Regions will also vary in their approach to the point at which the consultant is brought in to assist in resolving the issue. Some will involve the consultant right at the beginning, while other regions will wait to see if the issue can be resolved by the social worker and/or team leader before involving the consultant. Regions vary in their emphasis on the child-centered focus and mediation as a key element in conflict resolution.

Workforce adjustments over the past few years have resulted in cuts in headquarters staff, and the ability to monitor the effectiveness of the complaint resolution process in the regions. While corporate headquarters has recognized the need for more attention to be paid to the complaint resolution process in the regions, more recent organizational changes and staffing issues have delayed attention to this matter.

The key elements of the process include:

Receipt of the complaint and first stage of resolution:

A complaint can be made in writing, verbally or other means. Vancouver Coastal specifically states that complainants are encouraged to have a support person or advocate assist them throughout the process.

Regions vary in their use of complaint consultants (variously referred to as Dispute Resolution Consultants, Complaint Resolution Consultants, or Quality Improvement Teams). Regardless, these positions are outside of the direct line of authority and have an advisory and support role. In Vancouver Coastal and Vancouver Island, the complainants are referred immediately to the consultants who manage the complaints process. The consultant gathers the information and documents the complaint, then sends a letter to the complainant acknowledging receipt of the complaint, summarizing any concerns, copied to various involved staff. Other regions do not involve the consultant until the local stage of resolution has been completed, unless their involvement is specifically requested by either the social worker or team leader, or the complainant.

This first stage is intended to promote resolution at the local office, within 21 to 30 days. Vancouver Coastal suggests that the social worker and/or the team leader consider using an Alternative Dispute Resolution (“ADR”) process such as mediation or family group decision-making to assist in the resolution of complaints.

Involving the Manager:

If the social worker and team leader cannot come to a resolution, the complainant can request a review by the Manager, variously referred to as a Stage 2 review, or “Final Review”. If there is a perception of bias or conflict about the Manager performing the review then the Manager or consultant can request that a delegate conduct the review. This stage is given 30 days for completion. Managers may consider using an ADR

process to assist in reaching an agreement. This stage is referred to as Stage 2 or the “Final Review” (Vancouver Coastal).

Vancouver Island and the North regions differentiate between the Stage 2 review process where a resolution to the issue was reached, and where the manager is asked to make the final decision because a resolution could not be found (referred to as Stage 3). The consultant usually works with the Manager to write the final complaint review letter which will inform the complainant of the outcome of the final decision and any remedies which have been agreed upon, clarify the Manager’s reasons for the final decision, and advise the complainant of the process for an external review by the Office of the Ombudsman if the complainant is not satisfied. Some brochures also refer clients to the Child and Youth Officer, the Advocate for Service Quality for People with Developmental Disabilities, and the Helpline for Children.

Involving the Director of Operations/RED:

The Interior has a final regional level for review by the Director of Operations/Regional Executive Director. If this process is unsuccessful in resolving the complaint, then the complainant is referred to the Ombudsman.

Most processes make a distinction between decisions about case-planning and practice and decisions that involve administrative fairness. If there is disagreement between the manager and the consultant on an issue of administrative fairness, the consultant may involve their manager who will attempt to resolve the issue and if unsuccessful, refer the issue to the Director of Operations and/or the CEO for a final decision.

Use of Mediation:

The introduction of mediation as a dispute resolution tool has been incorporated by regions into their dispute resolution process with varying degrees of success. Research and experience suggests that there are a number of issues that need to be addressed if this process is going to be used in the child protection area. These issues include low uptake rates of voluntary programs, despite the fact that people have satisfaction rates with the process. This might be due to lack of knowledge of the process, fear of the unknown, or a view that mediation is an admission of weakness or error. Often social workers are skeptical or uncomfortable about the process, seeing the process as redundant. Others fear losing control over the situation. Families are often suspicious of government mediation and prefer to rely on their lawyers. Mediation services are also not well promoted. With high staff turnover in some regions, staff needs to be continually informed of the availability of the mediation services available to them.

A Child Protection Mediation Program was established in 1997 to provide mediation services across the province. The Facilitated Planning Meeting process has had very high success rates – only 5% of issues fail to reach a resolution using this method. The process is timely, with 89% of cases resolved in one meeting.

The use of collaborative planning approaches, such as mediation, has been shown to be an effective approach to child welfare. Clients are not in the system of their own free will, and are untrusting and resentful of the intrusion of the social worker into their lives. Mediation provides an important means to diffuse a difficult situation. Social workers are not generally trained in this area, and are often not trusting of the process, unless they have had an opportunity to work with it. Yet the process has many advantages, including the ability of mediation to build a better working relationship for the social worker and the client, setting a better foundation for future work with the client and family. While no one

can be forced to mediate, there are those that suggest the mediation should be a mandatory step in the efforts to resolve an issue.

Complaints Tracking System (CTS):

A custom system was developed by the Ministry when the Children's Commission was established, for the purpose of tracking the status of complaints as they progressed through the ministry and Commission. The system tracked:

- the name/address of the person making the complaint;
- the clients name, age, CIC status, location, and file ID;
- the nature of the complaint according to predetermined categories:
 - Access to Service
 - Being Treated with Dignity and Respect
 - Case Planning and Decision-Making
 - Communication
 - Contracted Service
 - Eligibility for Services
 - Individuals Actions/Failure to Act
 - Other - Explain
 - Quality of Care
 - S.70 Rights of Child Care
 - Sensitivity Toward Cultural Diversity
- a brief description of the issue;
- the date the complaint was registered; and,
- date the complaint was closed.

A copy of the record went to the regional complaint manager. Complaints over 30 days would receive an overdue notice. The intent was that the system would meet information needs both regionally, and for corporate purposes.

Use of the system varies greatly. Some regions do not use the system at all and have instead developed their own tracking systems. According to one region, the system no longer meets their needs and the technology is outdated. Those who do use the CTS use it to varying degrees, for example, some use it to track all complaint (both formal and informal), while others only use it to track formal complaints. Often fields are left blank.

Technical support for the system is no longer provided. There is no budget for technical support for users or for ongoing maintenance and update of the system. The system administrator manages the system "off the side of her desk".

Complaint Data:

Vancouver Island:

Data was provided for the period April 1, 2004 to December 31, 2005:

- there were 484 complaints recorded;
- 46% (225) complaints were settled and 24% (114) were either withdrawn or discontinued;
- 12% (56) were referred to Stage 2; of those, 6 complaints were taken to the Ombudsman's Office (it is unclear whether the remaining 50 complaints were successfully resolved or simply dropped);
- 12% (57) were not coded (26 were still open, the others had been closed by not coded);



- approximately two thirds of the complaints related to case planning or decision making, and communication issues.

Interior:

For the 2005 fiscal year:

- there were 193 complaints recorded;
- 36% (69) complaints were ineligible, or for information only;
- the average length of time to settle was 17 days;
- 54% (104) complaints were resolved at Stage 1, 9% (17) at Stage 2, and 1% (3) complaints went to Stage 3.

Ombudsman:

The Ombudsman Office dealt with 538 separate complaints about the Ministry in 2004. Some complaints would have been referred to the Ministry Dispute Resolution Process unless the complaint was from or about a youth. Of the 538 complaints:

- 7 were with regard to Adoptions;
- 481 involved complaints about services offered by the regions;
- 4 involved complaints about youth custody; and,
- 46 were "other" which would include delegated agencies and decisions made or reviewed at headquarters.

2.3.3 SERVICE DELIVERY TO ABORIGINAL CLIENTS

MCFD headquarters is organized into seven divisions that provide the infrastructure and support the work of the five MCFD service delivery regions. One of these divisions is the Aboriginal and Transition Services. Currently, 48% of the children in the ministry's care are Aboriginal; yet only 9% of children in BC are Aboriginal.

The ministry believes that services to Aboriginal children, families and communities should be provided in ways that are culturally appropriate. MCFD has entered into partnerships with Aboriginal communities to provide services that promote strong family and community ties and support systems. When there is concern regarding the safety or well-being of a child, efforts are made to consult with that child's Aboriginal community over the best course of action to keep that child safe within the community. When it is not possible for the child to remain within the community, attempts are made to place the child in care with another Aboriginal family or Aboriginal agency, to provide cultural continuity.

There are numerous provisions within the *Child, Family and Community Service Act* that pertain to Aboriginal children and families:

- Section 2(f) states that "the cultural identity of Aboriginal children should be preserved".
- Section 3(b), which identifies service delivery principles, states that "Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children".
- Section 4(2) states that "if the child is an Aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests."
- Section 34 requires that when an Aboriginal child is removed from a family the Aboriginal community be notified about the resulting court hearing. If a community representative attends and chooses to participate, that person can become party



to the proceedings. When all parties agree, an Aboriginal representative can participate in any mediation or alternative dispute process and can propose an alternative plan for the child's care.

- Section 71(3) describes the priorities for placement decisions when an Aboriginal child is placed out of his/her home by stating: "If the child is an, aboriginal child, the director must give priority to placing the child as follows:
 - with the child's extended family or within the child's aboriginal cultural community;
 - with another aboriginal family, if the child cannot be safely placed under paragraph (a)."

Through delegation agreements, the Director gives authority to aboriginal agencies to undertake administration of some or all parts of the *Child, Family and Community Services Act*. The amount of responsibility is negotiated by the Ministry and the community served by the agency and the level of delegation provided by the Director.

To July 2005, 156 of the approximately 200 First Nations bands are represented by agencies that have or are moving toward delegation instruments to manage their own child and family services. There are currently 23 delegated agencies in start up or operating with one of three levels of delegation. Four agencies are in start up; two agencies can provide voluntary services and recruit and approve foster homes; ten can provide guardianship services for child in continuing care; and seven have full child protection authority, including authority to investigate reports and remove children. Services provided by agencies are guided by the Aboriginal Operations Practice Standards and Indicators (AOPSI), and the *Child, Youth and Family Service Act*. There is a three-year practice audit schedule for agencies.

As of March 31, 2005, 1,349 (30.7 per cent) of the 4,393 Aboriginal children in care were served by delegated Aboriginal agencies. The percentage cited does not include those Aboriginal children placed in Aboriginal adoptive homes which increased from 25 per cent in 2003/04 to 50 per cent in 2004/05.

Complaints Resolution Process:

Under AOPSI, delegation categories are:

- Level 11: Student Social Worker
- Level 12: Resource Development/Voluntary Services: Social Worker or Supervisor
- Level 13: Guardianship Social Work: Guardianship Services Social Worker or Supervisor, or Agency Executive Director
- Level 14: Partial Child Protection: Child Protection Social Worker
- Level 15: Full Child Protection Authority: Child Protection Social Worker, or Supervisor, Agency Executive Director, and Delegation of Aboriginal Agency Employees.

Specific qualifications and criteria for delegation are defined in AOPSI. Within each level there are operational standards that must be met by the agency. For example, for Level 12, Standard 17 addresses the capacity of the agency to deal with complaints:

Operational Standard 17 – the Agency has established a complaint process which will review designated services and complaints made which are associated with the rights of children in care.

The Agency must have a process, policy, or protocol for the review of complaints, and have identified and oriented a designated person to ensure that the complaint process is

followed (member of the Board of Directors of the Agency, or an Elder or Band member). The process must be child-centred, accountable, fair, and be open and clear on entitlement. It must be accessible and information on how to access the process must be available. Complainants must have the right to an advocate or support person, and not subject to reprisals. Complaints must be dealt with in 30 days. The process must be sensitive and respectful of the Aboriginal culture and heritage. Specific complaint processes will vary, but all must meet the standards set in Operational Standard 17. Some agencies have an electronic complaint tracking system and others do not, depending on the degree of sophistication of the Agency.

Advocacy:

Child and Youth Office has created a position with special responsibility for Aboriginal issues across the Child and Youth Officer's mandate. The position is a result of a Memorandum of Understanding (MOU) between the CYO and the following four Aboriginal political organizations:

- First Nations Summit
- Métis Provincial Council of British Columbia
- Union of British Columbia Indian Chiefs
- United Native Nations

The MOU recognizes the benefits of working together in partnership to further the safety and well-being of Aboriginal children and families, through a jointly developed job description for a Deputy Child and Youth Officer – Aboriginal Services; recruitment and selection of a candidate; and joint setting of expectations for the position.

This position is currently vacant, although it anticipated that the position will be staffed later this summer.

3. PROVINCIAL JURISDICTIONAL REVIEW

3.1 Alberta

3.1.1 CHILD PROTECTION

Child protective services are provided under the authority of the *Child, Youth and Family Enhancement Act (Enhancement Act)* and the *Protection of Children Involved in Prostitution Act (PCHIP)*. The *Enhancement Act* was formerly the *Child Welfare Act*. It was renamed and amended in 2004. These amendments were a result of a review commissioned in June, 2001. The report, *Strengthening Families, Children and Youth*, was made after extensive research and information obtained through a widespread community consultation process.

Children's services are provided through ten Child and Family Services Authorities (CFSA's). Each of these Regional Authorities is led by a community board, whose members are chosen from the community and appointed by the Minister of Children's Services. Each Authority plans and oversees the delivery of programs and services to children and families residing in the region, including child welfare, adoption, protection of children involved in prostitution, day care subsidy, family violence prevention, services for children with disabilities, early intervention, and facility licensing. They also monitor and evaluate its services, and ensure that provincial standards are met. CFSA staff report to the authority through the chief executive officer and are Government of Alberta employees.

Authorities also contract with community-based agencies for the provision of services. Examples of contracted services include community agencies providing treatment for children in government care, family support services, and women's shelters. Other service providers include individuals such as foster parents and operators of day care centres, as well as local groups that offer early intervention or other supports designed to meet the needs of children and families in their communities.

For children and families living on reserves, child welfare and other services are often provided by a First Nations agency. As well, through the Family and Community Support Services (FCSS) program, participating municipalities and Metis settlements develop and deliver local, preventive programs in partnership with the province.

Government's role is to establish strategic government direction, set provincial policies and standards, monitor and assess the CFSAs, and allocate their funds. Corporate staff provide support for program delivery, partnership development and operations. They develop best practices and performance measures, and manage provincial programs and services. As well, they provide financial management, business, information technology, legal, human resource services and communication services.

3.1.2 ADVOCACY AND COMPLAINT RESOLUTION

The Office of the Child and Youth Advocate provides individual and systemic advocacy for children and youth receiving services under the *Child, Youth and Family Enhancement Act (Enhancement Act)* and the *Protection of Children Involved in Prostitution Act (PChIP Act)*. It also provides training and support to individuals, organizations and communities interested in advocating for vulnerable children and families.

The Child and Youth Advocate is appointed by Order in Council upon the recommendation of the Minister of Children's Services, for a period of up to five years. The Child and Youth Advocate must submit a report to the Minister every three months on the Office's activities and observations, plus an annual report on the exercise of the duties and functions of Office. The Minister must submit the annual report to the Legislative Assembly if sitting, and if not sitting at the time, within 15 days of the commencement of the next sitting.

The Child and Youth Advocate mandate includes:

- the provision of advocacy services to individual children and youth or groups of children and youth;
- the provision of advice regarding matters related to the welfare and interests of children receiving services under the *Enhancement Act* or the *PChIP Act*, and,
- facilitating the involvement of family or community members as advocates for children.

As well, Advocates may assist young people who were previously subjects of agreements or court orders, within 30 days of termination of the agreement or order. If a young person comes to the attention of the Child and Youth Advocate without there being a formal referral, the Advocate may initiate the collection of information to determine if the young person requires and wants the assistance of this Office.

The powers of the Children's Advocate include access to children, guardians, and others who represent children as well as all information relating to children receiving child welfare services. The Advocate can speak on behalf of, and otherwise represent a child when major decisions are being made, and contribute to formal decision-making processes to ensure that the child's rights, interests and viewpoints are considered. The

Advocate can also assist children by informing them of their procedural or substantive rights and by assisting them in exercising their rights.

The legislation promotes the use of mediation and regional alternative dispute resolution processes to resolve issues impacting case planning. These processes can vary by region, but will include community practices and programs that support conflict resolution. Families are encouraged to take advantage of these programs. This is intended to minimize the number of cases that go to administrative or appeal reviews.

There are two legislated options for disputes that cannot be settled through mediation – an administrative review and an appeal panel. The person with a complaint must first go through an administrative review prior to accessing the appeal panel. Any person directly affected by a decision made by a director in respect of a child can file a written request for an administrative review within 30 days of the director's decision. The director has 15 days to come to a resolution after the filing of the request for an administrative review.

Any child, guardian of a child, foster parent, or other person who is affected by a decision can request an appeal if the administrative review process does not resolve the issue.

Appeal panels consist of three to seven members. The appeal panels may confirm, reverse or vary the decisions. Appeal panels can only hear appeals on the following matters:

- the removal from or placement in a residential facility of a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order;
- the permitting or refusing to permit any person who has a significant relationship with the child to visit a child who is the subject of a permanent guardianship agreement;
- the refusal or failure of a director to enter into an agreement under certain parts of the Act in respect of a child who, in the opinion of that director, is in need of intervention;
- the refusal to provide support or financial assistance pursuant to section 56.1, 57.3 or 81 (private guardianship or adoption);
- any other matter prescribed in the regulations as being subject to an appeal to an Appeal Panel.

3.2 Ontario

3.2.1 CHILD PROTECTION

Child protection services are provided by 53 local children's aid societies under the Ontario *Child and Family Services Act*. Four of the children's aid societies are Aboriginal specific. Each society is an independent, non-profit organization with a local board of directors. The main duties of a children's aid society are to:

- investigate allegations or evidence that children under the age of 16 years may be in need of protection;
- protect, where necessary, children who are under the age of 16 years;
- provide guidance, counseling and other services to families for protection of children or for the prevention of circumstances requiring the protection of children;
- provide care for children assigned to its care under the Act;
- supervise children assigned to its care under the Act; and,
- place children for adoption.

The government's role in child protection is to fund, legislate and monitor the child welfare system. The Ministry of Children and Youth Services sets policy and provides program design for child welfare, licenses children's residential services and monitors children's aid societies through nine regional offices.

3.2.2 ADVOCACY AND COMPLAINT RESOLUTION

The Office of Child and Family Service Advocacy was first established in 1978. Under the Ontario *Child and Family Services Act*, it is responsible for protecting the rights and interests of children and families who are receiving or seeking services through the Ministry of Children and Youth Services. It also advises the Minister on matters that concern children and families.

The Act allows for other services provided to children and families to fall within the mandate of the Advocate by regulation. Ontario's child advocate now represents children and youth who are seeking or receiving services under the *Child and Family Services Act*, in the youth justice system, the children's mental health system, the child welfare system (children's aid societies), and provincial and demonstration schools for the deaf and blind. In 2004, the advocate's office received approximately 3,200 calls and conducted seven reviews. While these reports are generally not released to the public, a report was released in 1998² which called for systemic improvements to the system, and criticized the government for lack of movement in making changes to the system.

Currently, the advocate reports to the Minister of Children and Youth Services. A review of the office of the child advocate and its role was commissioned in the spring of 2004 following a highly controversial attempt by the government to require that all reports, findings and press releases by the Advocate's Office be reviewed by the ministry for approval before being released. The recommendations made by the review included making the advocate an officer of the legislature to enhance their independence, and clarifying the role and mandate of the advocate. Planned changes to the legislation were announced last spring to make the child and youth advocate an officer of the legislature. Under the new law, the advocate would be selected by an all-party legislative committee and report directly to the legislature.³ These changes have not yet been introduced.

The complaint resolution process is defined in Sections 68 and 109 of the *Child and Family Services Act*:

68. (1) A society shall establish a written review procedure, which shall be approved by a Director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request.

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

The complaint can be made by the child, the child's parents, or another person representing the child. The service provider must try to resolve the complaint. If the person is not satisfied, they can refer the complaint to the Minister to request that the Minister appoint a person, who must not be an employee of the service provider, to conduct a further review of the complaint. That review can be a hearing, but it is not mandatory. The hearing must be concluded within 30 days and set out the findings and recommendations. The report must be provided to the person who made the complaint,

² Voices From Within: Youth in Care in Ontario Speak Out
<http://www.children.gov.on.ca/CS/en/programs/OCFSA/Publications/Voices.htm>

³ <http://www.children.gov.on.ca/CS/en/newsRoom/backgrounders/050308.htm>

the service provider, and the Minister. If the Minister decides to take action, the person who made the complaint and the service provider must be notified. Complaints can also be referred to the Ontario Ombudsman.

3.3 Manitoba

3.1.1 CHILD PROTECTION

Child protection services are provided under the authority of the *Child and Family Services Act*. Services for children and families are provided through a system of government offices, mandated agencies and related service providers. The child protection section of the child and family services division has programs for adoption, child abuse registry, protecting children from abuse and neglect, foster care and post-adoption registry. Programs include counseling, education, emergency assistance, practical support and treatment. Foster homes are approved and managed by the mandated authorities according to geographic regions.

The child welfare system is currently in the process of restructuring. The Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI) is an initiative to restructure the child and family services system in Manitoba. In the new system, the delivery of child and family services will be much more of a shared responsibility between the Province and Aboriginal peoples. The most fundamental change will be the delegation of responsibility for the delivery of child and family services from the Province to four new child and family services Authorities, three of which are Aboriginal Authorities serving Aboriginal people. All four Authorities and their agencies will provide services throughout the province. Aboriginal children and families will have access to child and family services under the auspices of Aboriginal agencies, no matter where they live in Manitoba.

A community consultation phase was conducted in 2001, through a document entitled *Promise of Hope: Commitment to Change*. In 2002, legislation was introduced to create the new Authorities and structure. The Act came into force in late 2003. The province is currently in the process of implementing these changes to the service delivery structure for child protection services, as envisioned through this joint initiative.

3.1.2 ADVOCACY AND COMPLAINT RESOLUTION

Manitoba created its Office of the Children's Advocate in 1993 under the *Child and Family Services Act*. The Office of the Children's Advocate became an independent office of the Manitoba Legislative Assembly in 1999. Prior to that it reported to the Minister of Family Services. An Advocate is appointed for a three year term, and can be reappointed for one additional term. The Advocate must submit an annual report to the Speaker of the Assembly reporting on the performance of the duties and the exercise of the powers of the children's advocate. This report must be tabled in the House within 15 days.

The Office represents the rights, interests and viewpoints of children and youth who are receiving, or should be receiving, services under the *Child and Family Services Act* and *Adoption Act*. The children's advocate advises the minister on matters relating to the welfare and interests of children and investigates complaints relating to children who receive or may be entitled to receive services under this Act, or relating to services provided or available to children under this Act. The Advocate can also represent the rights, interests and viewpoints of children who receive or may be entitled to receive services under this Act, except in the capacity of legal counsel. The Legislative Assembly may refer matters to the Advocate for investigation and review. The services of the children's advocate are summarized as follows:



- Listen to concerns of children, young people and their families;
- Make appropriate referrals;
- Facilitate the resolution of concerns and valid complaint;
- Provide information about the child and family services and adoption system in Manitoba;
- Make recommendations to those in positions of authority inside the agencies or government;
- Promote public awareness of the Office of the Children's Advocate and children's rights in the community; and,
- Report systemic issues to appropriate child welfare authorities.

The complaint resolution process is outlined in the Child and Family Services Standards Manual.⁴ Powers to establish complaint review policy and procedures and to hear appeals are specified by regulation and are split between the director and the authorities. The Children's Advocate can get involved in a complaint at any time. Issues that remain unresolved can be taken to the Ombudsman's Office. As with other Ombudsman's Offices, the Ombudsman only has the authority to make recommendations.

All child and family services agencies and licensed adoption agencies must establish policies and procedures for dealing with inquiries and complaints from clients, service providers and the general public. These policies and procedures are intended to effectively address complaints and, when possible, to resolve issues before they escalate. Access must be provided by the complainant to the supervisors, regional directors, a review committee (for non-government agencies) and if a direct government service, to the director of child and family services. An agency complaint review process must not in any way restrict a person's right to complain to the agency's mandating authority, the director, the Children's Advocate or the Ombudsman. Agencies are expected to address complaints within 10 working days.

Non-government (external) agencies must establish board or community committees to review complaints not resolved by agency supervisors and directors. Board committees consist of board members and report to the board. Community committees may be given a degree of independence from the board on the understanding that the agency retains legal responsibility for the delivery of services. Regional offices are also encouraged to involve community members in resolving complaints.

3.4 Saskatchewan

3.4.1 CHILD PROTECTION:

The primary piece of legislation for child protection in Saskatchewan is the *Child and Family Services Act*. The purpose of the Act is to "promote the well being of children in need of protection by offering services that are designed to maintain, support, and preserve the family in the least disruptive manner." This Act provides the authority for the establishment and operation of family services; for the provision of family services to/for a parent or child in need of services; and the authority to enter into agreements with any person providing family services.

Child protections services are provided by the Ministry of Community Resources and Employment, Child and Family Services. The Ministry provides targeted support programs and services to at-risk children, youth and families. It also supports child

⁴ <http://www.gov.mb.ca/fs/cfsmanual/1.7.3.html>

welfare services to protect children from abuse and neglect. In addition, the division provides care, supervision, assessment and treatment for children in the Minister's care. The division supports families at risk to avoid crisis situations that require child welfare interventions. The goal of Child and Family Services is to help children, youth and families to become healthy, independent members of the community. Programs and services are designed to preserve and strengthen the family unit. The main program and service areas include child protection, targeted support services, services for children and youth in care, and adoption and post-care services.

Child Welfare programs are delivered through five regional offices and service centres in 22 communities. The department also has agreements with 18 First Nations, which give authority to First Nations Child and Family Services Agencies to deliver child welfare services to children and families living on reserve.

3.4.2 ADVOCACY AND COMPLAINT RESOLUTION:

The Children's Advocate is an appointed Officer of the Legislative Assembly under the *Ombudsman and Children's Advocate Act*. The Advocate is appointed for a five year term, and is renewable for one additional five year term.

Annual reports are submitted to the Speaker, describing the progress and activities of the Children's Advocate in the previous year. These reports are tabled in the Assembly by the Speaker. The Children's Advocate can also publish reports respected the exercise of the Advocates powers and performance of duties, or on any particular case that has been investigated. Those matters do not have to have been the subject of a report to the Assembly.

The Children's Advocate can review and investigate any matter concerning a child or group of children receiving services from any government department or agency, or concerning services being provided to a child or group of children. Matters can come to his/her attention through any source. Any person, including a child, can request an investigation. A child is a person under 18 years of age and includes a person 18 years of age or more who is receiving services pursuant to the *Youth Criminal Justice Act* (Canada), *The Young Offenders' Services Act* or section 56 of *The Child and Family Services Act*. The Children's Advocate receives concerns when people believe that a child's or youth's interests are not being considered, their rights are being ignored, their viewpoint is not being heard, or where all relevant information about them has not been considered when a decision was being made. The Office typically receives concerns regarding Social Services, Health, Education, Justice and Corrections and Public Safety, as well as Indian Child and Family Services agencies. The Advocate can refuse to investigate or cease to investigate a complaint.

Where appropriate, the Children's Advocate may attempt to resolve matters through negotiation, conciliation, mediation, or other non-adversarial approaches. Formal investigations can be conducted. The Advocate can require any person to provide information, documents or things regarding any matter being investigated, and can summon and examine under oath any person who is able to provide information relating to the matter being investigated.

The Children's Advocate can also become involved in public education and undertake research to support and promote the interests and well-being of children. The Children's Advocate advises Ministers on services and their impact on children, including identifying problems in services and areas for improvement.

The Children's Advocate has no authority to reverse a decision or to make a decision regarding services provided by the provincial government. They cannot get involved where no direct provincial government service is being provided or where the complaint is concerning a decision of a court, judge or justice of the peace; the federal government; a local school board or municipal government; or the police.

A formal complaint resolution process is not in place. However, anyone can make a complaint under the *Child and Family Services Act* regarding a decision made by the director under the Act, or anyone acting on his behalf. A decision can be reviewed by the Minister, or a Family Services Board. The Board is made up of members appointed by the Minister who are interested and knowledgeable in the programs and services provided under the Act. After completing the review of the complaint, the Board can make recommendations to the Minister, who can then confirm, reverse or vary the director's order. Complaints can also be referred to the Ombudsman or Child Advocate, although they have no power to overturn decisions.

4. INTERNATIONAL JURISDICTIONAL REVIEW

4.1 Australia

Two Australian states were selected for review – Queensland and New South Wales.

Queensland:

The Children's Commission of Queensland was first set up in 1996. It was the first independent commission for children established anywhere in Australia. Under the *Commission for Children and Young People Act 2000*, the Commission became an independent statutory body. The 2000 Act replaced the previous Commission and gave it additional functions, including:

- promoting laws, policies and practices to protect the rights, interests and wellbeing of children and young people;
- administering a community visitor program to provide advocacy and support services to children in youth detention facilities, mental health facilities and out-of-home residential facilities;
- receiving, investigating and resolving complaints about service to children in care;
- establishing youth and other expert advisory committees to advise the Commissioner about specific issues;
- monitoring and reviewing laws, policies and practices related to the delivery of services to children or those that impact on them;
- conducting employment screening of certain child-related employment and businesses; and,
- coordinating research into issues affecting children.

In January 2004, further changes to the Act were introduced that adopted the recommendations of the Crime and Misconduct Commission, a commission arising from an inquiry into abuse in foster homes (*Commission for Children and Young People and Child Guardian Act 2000*). This gave rise to a clearly defined child guardian role in relation to children in the "child safety system", both at an individual and systemic level, which included an enhanced monitoring and review capability. These changes are now being implemented as outlined in the Commission's new Strategic Plan 2005-2009.

Table 1 – Summary of Provincial Jurisdictions

	BC	Alberta	Saskatchewan	Manitoba	Ontario
Statute	Office for Children and Youth Act	Child, Youth and Family Enhancement Act	Ombudsman and Children's Advocate Act	Child and Family Services Act	Child and Family Services Act
Term	Up to 5 years, renewable	Up to 5 years	5 years, renewable for 1 term	3 years, renewable for 1 term	No term specified
Independence	Order in Council appointee	Order in Council appointee	Officer of the Legislature	Officer of the Legislature	Not specified.
Reports	To the Minister; annual report to be tabled Special public reports	To the Minister quarterly & annually; annual report tabled	Annually to the Speaker; public reports	Annually to the Speaker; Special public reports	To the Minister
Scope	Services provided or funded by government including: <ul style="list-style-type: none"> • Family support, child protection, adoption and guardianship; • Early childhood development/care • Mental health • Addictions • Youth justice • Transition to adulthood 	Services to children under the <i>Enhancement Act</i> or under the <i>Protection of Children Involved in Prostitution Act</i> .	Any matter concerning child receiving services from any government department or agency	Services to children under the Child and Family Services Act or Adoption Act	<ul style="list-style-type: none"> • Services to children under the Child and Family Services Act or Adoption Act • Youth justice • Mental health • Child welfare • Schools for deaf and blind
Functions	<ul style="list-style-type: none"> • support children to improve access to relevant government services • observe services independently for their effectiveness, responsiveness and relevance • advise government how to improve services. 	<ul style="list-style-type: none"> • Advocacy services for children; • Advice regarding matters related to the welfare and interests of children • Facilitating the involvement of family/community members as advocates for children 	<ul style="list-style-type: none"> • Engage in public education • Work to resolve disputes • Conduct independent investigations • Recommend improvements in programs for children to the government • Advocates for rights of children as identified in the CRC 	<ul style="list-style-type: none"> • Advise the minister on matters • Review and investigate complaints • In response to a request, represent, the rights, interests and viewpoints of children. 	<ul style="list-style-type: none"> • Coordinate and administer advocacy system; • Advise the Minister on matters and issues concerning the interests of children/ families; • any similar functions given to it by Act /regulations

New South Wales:

The Commission For Children and Young People was established in 1999 by the *Commission for Children and Young People Act 1998*. The Commissioner holds a term of up to five years and can be reappointed for up to two successive terms of office. The Commissioner can only be removed from office for misbehaviour, incapacity or incompetence.

The Commission is a corporation and reports annually to the NSW Parliament. The report must include a description of its activities during the year in relation to its principle functions, an evaluation of the response of relevant authorities to the recommendations of the Commission, any recommendations for changes in the laws of the State or for administrative action, and a description of any request made by the Commission to conduct a special inquiry that was not approved by the Minister. The Commission is required by statute to provide the Minister with a draft copy of the report one month prior. The Minister may require the Commission to consult further but can only do this once for each report. The Commission is not bound to amend its report in light of any comments made by the Minister, but must, before finalizing its report, consider any comment that was provided to it by the Minister and the results of further consultation.

The Commission's activities are overseen by the Parliamentary Committee on Children and Young People. The Commission reports its findings and recommendations to Parliament. In particular, the Committee is required to examine and report on annual and other reports of the Commission for Children and Young People. However, the Committee has a broader responsibility to examine trends and changes in services and issues affecting children and young people, and to make recommendations as to the need for changes to the functions and procedures of the Commission for Children and Young People. The Committee on Children and Young People cannot investigate matters relating to particular matter.

The Commission administers two pieces of legislation, the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*. It cannot examine individual complaints about unfair, illegal or improper conduct relating to children. Individual grievances by children and young people are referred to the Ombudsman, HealthCare Complaints Commission or Independent Commission Against Corruption. The Office has 42.7 FTEs and a budget of \$8.4M.

The principal functions of the Commission are to:

- promote the participation of children in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children appropriate to their age and maturity;
- promote and monitor the overall safety, welfare and well-being of children in the community and to monitor the trends in complaints made by or on behalf of children;
- conduct special inquiries into issues affecting children;
- make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children;
- promote the provision of information and advice to assist children;
- conduct, promote and monitor training, research and public awareness activities on issues affecting children,
- participate in and monitor screening for child-related employment;
- develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children; and,
- support and assist the Child Death Review Team in the exercise of its functions.

In 2004 an independent review of the Commission's legislation was carried out. Recommendations in the report were related mostly to improving specific functions related to protecting children in child-related employment.

4.2 New Zealand

The Office of the Commissioner for Children was first established under the *Children, Young Persons and Their Families Act 1989*. In 2003, the *Children's Commissioner Act* was passed, setting out the Commissioner's powers and functions in a stand-alone statute. This Act gave greater independence to the position, through its establishment as an independent Crown entity under the *Crown Entities Act 2004*. The Commissioner is the Board under the Act and is required to act independently of the Minister. The Commissioner can be removed from office by the Minister. The reporting relationship is to the responsible Minister (Social Development and Employment). However, there is authority under the Act to report, with or without request, to the Prime Minister on any matters affecting the rights, interests or welfare of children. The Minister cannot direct the actions of the Commission, but can make requests.

The Act allows the commissioner to inquire into any matter affecting children and young people in any service or organization and investigate the actions of the Department of Child, Youth and Family Services. The office promotes children's and young people's wellbeing through advocacy, consultation, monitoring, research and investigation investigations/monitoring.

The general functions of the Commissioner are to:

- Inquire into and report on any matter relating to the welfare of children by investigating any decision or recommendation made, or any act done or omitted in respect of any child.
- Monitor the Department of Child, Youth and Family Services and other persons, bodies and organizations exercising any function or power conferred by the Children, Young Persons and Their Families Act 1989.
- Advise the Minister and Associate Minister on any matters relating to the administration of the Children, Young Persons and Their Families Act 1989.
- Promote public awareness of children's rights and issues relating to the welfare of children and young people.
- Advocate for and on behalf of children and young people.
- Seek children and young people's views on issues and enable their voices to be heard.
- Promote the development of policies and services designed to protect the interests, rights and welfare of children and young people.
- Raise awareness and understanding of the United Nations Convention on the Rights of the Child and advance and monitor its application by departments of State and other instruments of the Crown.
- Promote the establishment of accessible and effective complaints mechanisms, in key agencies, for children and monitoring the nature and level of complaints.
- Undertake research into matters relating to the interests, rights and welfare of children and young people.

The Ministry's Child and Family Service division has an internal complaint process to review complaints regarding services provided by the Ministry. If a complainant feels dissatisfied with the outcome of an internal complaint investigation, they are directed to contact local MP, the Minister of Social Welfare, the Ombudsman, the Privacy Commissioner, or the Commissioner for Children.

4.3 Scotland

Scotland's first Commissioner for Children and Young People was appointed in 2004 under the *Commissioner for Children and Young People's Act*. The Commissioner is independent of the Executive. Accountability is through an annual report on the exercise of her functions to the Scottish Parliament.

The general function of the Commissioner is to promote and safeguard the rights of children and young people. The Commissioner is not responsible for investigating cases relating to the rights of and provision of services for individual children. There are other established procedures through existing statutory bodies (hearing bodies and the Ombudsman), to deal with individual complaints. The focus of the Office is therefore on:

- generating widespread awareness and understanding of the rights of children and young people;
- considering and reviewing the adequacy and effectiveness of any law, policy and practice as it relates to the rights of children and young people;
- promoting best practice by service providers;
- commissioning and undertaking research on matters relating to the rights of children and young people.

Children's rights, the responsibilities of adults and public organizations to care for and protect them, and adoption rights are set out in the *Children's (Scotland) Act 1995*. The Act is based on the UN Convention on the Rights of the Child:

- each child has a right to be treated as an individual;
- each child who can form his or her views on matters affecting him or her has the right to express those views if he or she wishes;
- parents should normally be responsible for the upbringing of their children and should share that responsibility;
- each child has the right to protection from all forms of abuse, neglect or exploitation;
- in decisions relating to the protection of a child every effort should be made to keep the child in the family home;
- any intervention by a public authority in the life of a child should be properly justified and should be supported by services from all relevant agencies working in collaboration.

4.4 Norway

Norway was the first country to establish a commissioner, or ombud, with statutory rights to protect children and their rights (Act No. 5 Of March 6. 1981 Relating To The Ombudsman For Children). Since 1981, the Ombudsman for Children in Norway has worked continuously to improve national and international legislation affecting children's welfare. The work of the office is based on the UN Convention of Rights for Children (CRC).

The children's ombudsman is appointed by the king for a four-year period. No one can be Ombudsman for more than a total of eight years. The Ombudsman submits an annual report to the Ministry about his activities in the preceding calendar year. That report is available to the public.

The Ombudsman may act on own initiative or at the request of other people, but he can decide whether an application offers sufficient grounds for action. If an application concerns a specific child and the application does not come from the child itself, the



Ombudsman cannot deal with the case without the permission of the relevant child. Under certain circumstances, the Ombudsman can deal with the case even though permission has not been obtained. The law specifically prohibits interference in family disputes.

The ombudsman has unrestricted access to all public and private institutions for children and has the right to be provided with information.

The Ombudsman works to ensure that the “needs, rights and interests of children are given the necessary consideration in all areas of society”. The Ombudsman does not have the authority to decide cases or set aside decisions in the administration.

The Ombudsman for Children is expected to: ⁵

- promote full implementation of the Convention on the Rights of the Child;
- promote a higher priority for children and a higher visibility of children, in government and in civil society;
- improve public attitudes toward children;
- influence law, policy and practice, both by responding to government and other proposals and by actively proposing changes;
- promote proper co-ordination of government for children at all levels;
- promote effective use of resources for children;
- provide a channel for children’s views, and to encourage government and the public to give proper respect to children’s views;
- review children’s access to, and the effectiveness of, advocacy and complaints systems, including in institutions, schools, and the courts;
- respond to individual problems or complaints from children, and where appropriate to initiate or support legal action on behalf of children.

4.5 Sweden

The Children's Ombudsman is appointed by the Swedish Government for a term of six years.

The Ombudsman’s main duty is to promote the rights and interests of children and young people as set forth in the United Nations Convention on the Rights of the Child (the CRC). The agency monitors the implementation of the CRC in Sweden and disseminates information on the Convention. The Children’s Ombudsman submits an annual report to the Government. This report addresses the situation of children and young people in Sweden.

A key duty of the Children’s Ombudsman is to participate in public debate, promote public interest regarding key issues, and influence the attitudes of decision-makers and the public. However, the Ombudsman does not supervise other authorities and, by law, may not interfere in individual cases.

In order to find out their views and opinions the Ombudsman maintains regular contact with children and young people through school visits, youth clubs, children and youth councils and an interactive website.

Duties of the Children’s Ombudsman are:

- propose to the Government amendments to laws or other measures needed to accommodate the rights and interests of children and young people;

⁵ <http://www.barneombudet.no/cgi-bin/barneombudet/imaker?id=8569>



- disseminate information, mould opinion and undertake initiatives to promote the interests of children;
- represent the rights and interests of children and young people in the public debate;
- assemble knowledge and compile statistics on the living conditions of children and young people; and,
- follow international developments regarding interpretation of the Convention on the Rights of the Child and its application.

The Children's Ombudsman Act was amended in 2002 to strengthen the mandate and authority of the Office of the Children's Ombudsman. Statutory provisions now regulate a greater part of the Children's Ombudsman's activities. Decisions on the work of the Children's Ombudsman are passed by Parliament instead of being made by the Government. The Children's Ombudsman is now empowered to request from individual government agencies and municipal and country authorities information about what they are doing in their activities to ensure compliance with the CRC. The Children's Ombudsman can also summon government agencies and municipal and county authorities for discussions.

5. RESULTS OF CONSULTATIONS

Following the initial research and information gathering phase of this project, people were identified to be interviewed who had been involved in and/or are currently involved in the system. The purpose was to get a perspective from those who were part of the child protection system, particularly over the past 10 years, and that had seen and experienced many of the changes and the impact that those changes had. Over 20 people were interviewed and many written submissions were reviewed to gain a further perspective on people's thoughts on the issues of advocacy and the complaints process. The process did not include interviews of people who had received services from any of the organizations referred to in this paper, because of the limited time available to complete this review.

Because of the diversity of people's backgrounds and experience, a general interview guide was developed, although not all questions were applicable to all interviews:

1. What was your past role/current role in the protection services? Please explain.
2. What do you see as the role of the child advocate? Is this different than the role that the children's commissioner provided? The Ombudsman?
3. Is there a difference between advocacy and complaint resolution?
4. If you could structure the role of child advocacy, how would you do it? What would you change or improve upon?
5. Is there a role for non-government child advocacy? What role is that?
6. What should be the scope of child advocacy functions (under which statutes)?
7. How "independent" does a position have to be to be an effective advocate?
8. Explain the past/current complaint resolution process. How effective was that process?
9. Do you need an outside body to monitor the complaint process? Should that body be able to make decisions vs. recommendations? Where should that body reside?
10. Are there any additional comments/concerns you would like to share?

The following is a summary of those comments received, grouped into categories to help identify the issues:

Table 2 – Summary of International Jurisdictions

	Norway	Sweden	New Zealand	Scotland	Queensland	NSW
Statute	Act No. 5 Of March 6, 1981 Relating To The Ombudsman For Children	Children's Ombudsman Act	Children's Commissioner Act	Commissioner for Children & Young People's Act.	Commission for Children & Child Guardian Young People Act 2000	Commission for Children & Young People Act 1998
Term	4 years, renewable for 1 term	For a specified period of time	5 years	5 years, renewable for 1 term	6 years	5 years
Independence	Appointed by king.	Appointed by the Swedish Government	The Commissioner is the Board of the corporate entity under the Act.	Appointed by Parliament.	Office of the Legislature	Office of the Legislature Overseen by the Parliamentary Committee on Children & Young People.
Reports	Annual reports to the Ministry for the previous calendar year.	Annually to the government	With or without request, to the Prime Minister on any matters affecting the rights, interests or welfare of children. Reports are public.	Annually to the Scottish Parliament.	Annually to Queensland parliament	Annually to NSW parliament;
Scope	Works to ensure that the needs, rights & interests of children are given the necessary consideration in all areas of society.	Represents the rights & interests of children re: CRC.	Any matter affecting children and young people in any service or organization and investigate the actions of the Department of Child, Youth and Family Services.	Promotes & safeguards the rights of children & young people served by public, private or voluntary organisations	Promotes and protects the rights, interests and wellbeing of all Queenslanders under 18	The Commission administers two pieces of legislation, the Commission for Children and Young People Act 1998 and the Child Protection (Prohibited Employment) Act 1998.
Functions	<ul style="list-style-type: none"> - promote full implementation of the CRC; - promote a higher priority & visibility of children in government & in civil society; - improve public attitudes toward children; - influence law, policy & practice, 	<ul style="list-style-type: none"> - Promote the rights & interests of children as per the CRC; - follow international developments regarding interpretation of the CRC; - propose amendments to laws/other 	<ul style="list-style-type: none"> - investigate any matter in respect of any individual child - promote establishment of accessible/effective complaints mechanisms; monitor the nature/ level of complaints; - raise awareness & understanding of children's interests, rights, welfare; 	<ul style="list-style-type: none"> - Promote & safeguard the rights of children - Promote awareness & understanding of the rights of children - Keep under review the law, policy & practice relating to the rights of children Promote best 	<ul style="list-style-type: none"> - promoting laws, policies & practices to protect the rights, interests & wellbeing of children & young people; - administering a community visitor program to provide advocacy & support services to children in youth detention facilities, 	<ul style="list-style-type: none"> - promote the participation of children in decision making - to encourage government & non-government agencies to seek the participation of children; - promote & monitor the overall safety, welfare & well-being of children in the community

	Norway	Sweden	New Zealand	Scotland	Queensland	NSW
	<ul style="list-style-type: none"> - promote proper coordination of government; - promote effective use of resources for children; - provide a channel for children's views, & to encourage government & the public to give proper respect to children's views; - review children's access to, & the effectiveness of, advocacy & complaints systems, including in institutions, schools, & the courts; - respond to individual problems or complaints from children, & where appropriate to initiate or support legal action on behalf of children 	<ul style="list-style-type: none"> measures; - disseminate information, mould opinion & undertake initiatives to promote the interests of children; - represent the rights & interests of children in the public debate; - assemble knowledge/statistics on the living conditions of children 	<ul style="list-style-type: none"> - raise awareness & understanding of the CRC; - undertake & promote research into any matter that relates to the welfare of children; - advocate for children's interests, rights, & welfare generally, & advance/monitor the application of the CRC by departments; - present reports on CRC issues to court or tribunal - receive & invite representations from members of the public on any matter that relates to the welfare of children; - increase public awareness of matters that relate to the welfare of children; - promote participation of children in decisions & an approach to children's views that gives due weight to those views - inquire generally into, & report on, any matter, including any enactment or law, or any practice or procedure, that relates to the welfare of children 	<ul style="list-style-type: none"> practice by service providers. - Promote, commission, undertake & publish research Encourage the involvement of children in the work of the Commissioner - Ensure that children are aware of the functions of the Commissioner Consult children & organizations on work to be undertaken. - Pay particular attention to children & young people who do not have other adequate means to make their views known. - Prepare & keep under review a strategy for involving children. - Carry out investigations on the extent to which service providers have regard to the rights, interests & views of children 	<ul style="list-style-type: none"> mental health facilities & out-of-home residential facilities; - receiving, investigating & resolving complaints about service to children in care; - establishing youth & other expert advisory committees to advise the Commissioner about specific issues; - monitoring & reviewing laws, policies & practices related to the delivery of services to children or those that impact on them; - conducting employment screening of certain child-related employment & businesses; & - coordinating research into issues affective children. 	<ul style="list-style-type: none"> - monitor the trends in complaints made by or on behalf of children; - conduct special inquiries into issues affecting children; - make recommendations to government & non-government agencies on legislation, policies, practices & services affecting children; - promote the provision of information & advice to assist children; - conduct, promote & monitor training, research & public awareness activities on issues affecting children, - participate in & monitor screening for child-related employment; - develop & administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children; & - support & assist the Child Death Review Team in the exercise of its functions.

On overlapping functions between the Child, Youth and Family Advocate, Children's Commissioner, and the Ombudsman:

- The role of the Advocate was to represent the rights, views and interests of the child. The Children's Commission needed to be impartial, with no vested interest. That distinction was important. The Children's Commission needed to be impartial because of their role in reviewing past decisions/child deaths.
- The Advocacy Office was not neutral or impartial and was not intended to be; their role was clearly to represent the views and interests of the child and focus on solutions; with their systemic work they could take a more neutral stance.
- There was some overlap between the different agencies but not necessarily duplication of effort. They were looking at the same issues but using a different lens. The roles tended to complement each other. There could have been duplication on research initiatives. The Advocacy Office tended to be a forward thinking agency, looking for solutions to present day issues; the Children's Commission was more reflective, looking at past decisions, and reviewing them.
- Commission worked well with the Advocate office. A protocol between the offices was worked out. Was there overlap? Maybe, but the two offices seemed to work well together. The intake process certainly created overlap because both offices needed to collect basic information.
- The Offices were created from different processes (Advocates Office from a review of the child protection legislation; the Children's Commission from the Gove Report). It was a work in progress and both offices recommended to the Attorney General on at least two occasions that the offices be combined.
- The Ombudsman Office was involved on some issues, and would review what the Children's Commission had done to ensure administrative fairness, but not look at the care decision, only breach of rights. The Office was vague on its role and often did not refer complaints to the Advocates Office, at least at first, until they had some confidence that the complaint would be heard.
- Ombudsman's Office could not review complaints about the Advocate Office because it was an Office of the Legislature. But it could review complaints about the Children's Commission; therefore it could not have an informal process between the two organizations. It was possible that there would be two processes going on at the same issue.
- Ombudsman role not always clear; tended to be "loose" in its interpretation of administrative fairness; tended to be independent and did not readily share information.
- The Core Service Review resonated with ministry staff. There were too many oversight bodies that were not coordinating their approach. Core service review paper was "right on". It was a good administrative review and correct in the assessment of the situation. There were so many oversight bodies that it was confusing for staff. Staff spent all their time responding to all these bodies, repeating themselves. There was no clarity in their roles; they were tripping all over each other.
- Coroners Office would review all children deaths, but from a different point of view i.e. cause of death. The Commission used child deaths as a window into the system as to the quality of services being provided.



- There needs to be a clear definition of advocacy and roles need to be clearly defined so there is no overlap.

On the Children's Commission:

- The Children's Commission role in reviewing care plans was highly controversial and tended to be a lightning rod for the ministry. They churned out thousands of recommendations that were essentially useless. It became an industry, and then tracking their implementation became a nightmare.
- The complaints review process in the Commission was clumsy and cumbersome. It was too complex and it could take months before a review of a complaint was completed. All decisions to go to Tribunal were in the Commissioners hands, and it was a very slow process.
- The Commission staff was seen as being petty, and not helpful. They used up lots of staff time, and came up with useless recommendations. They often did not have a background in child protection matters. They were not respectful, and had an attitude that they knew better. It was almost a supervisory role, watching over the operational decisions by operational staff. They thought that they had to find fault.
- They had little credibility with staff; staff were expected to implement their recommendations, they really didn't have any choice; issues could be escalated. The Ministry should be unfettered in its decision making authority to fulfill its legislative mandate. This oversight role created tension.
- There are audits of services within the Ministry to ensure quality of service. There should be scrutiny and accountability.
- Children in care tend not to get the attention that child protection issues get. Care plans are often done poorly but are important to the people who are on the receiving end. They tend to be viewed as a contract with the ministry for services and a statement of expectations, and are a record of what has happened while in care. They are often not up to date. There was therefore a need to have these plans reviewed.
- Ombudsman was effective because he could go straight to the front lines, get a quick response and help resolve an issue. Children's Commission was always later in the process when everyone had already beaten the issue to death. They tended to work with senior management who were removed from the issue, not the frontline workers; by the time it reached the tribunal stage then ADR not effective, and the complainant was frustrated and angry.

On the Tribunal Process:

- The Tribunal process was hellish; it was too long and went on forever, like court cases; there were delays; it was not timely; they were adversarial in nature; not child friendly processes. By the time it reached the Tribunal stage, the parties were entrenched in their positions, unwilling to work with each other.
- Tribunal process was seen as the ultimate threat for both parties. No one wanted to go through the process. Decisions tended to become public and politicized. But there are benefits to the process because it forces change where it is needed. After the Dreyer case the ministry was more willing to consider ADR.
- The Tribunal process arose out of the Review Board process, which was quasi-judicial in nature and focused on children's rights. Tribunal process did not work well; it was



adopted from the review board process and there was resistance within the ministry to the concept of an external review process.

- It is unfair not to hear both sides of the argument fully. Lawyers are needed to ensure that it is a level playing field and that both parties are heard.
- There are a small number of complaints that eventually worked their way to the Children's Commission. Very few complaints went on to the tribunal process. On those, the parties were unwilling to resolve the issue and needed an outside process.
- The Tribunal panel members were not appropriately selected; there was a lack of understanding of the issues; it was an adversarial relationship with the Ministry; the addition of legal counsel only complicated the matter.
- The Tribunal needed more authority to subpoena witness, get documents, and generally require that the matters move more quickly. Lawyers became adept at using the process to delay.
- There was general frustration on everyone's part that at the end of a long, drawn out process, that the Tribunal could only make recommendations. What was the point?
- The Advocates Office played an important role in Tribunal hearings. They kept trying to bring the discussion back to the child, in an atmosphere that tended to lose that focus.

On advocacy:

- Clients are disempowered and vulnerable people; faced with a huge and powerful bureaucracy that can have a devastating effect on their life. Acting in the "best interests" is subjective; advocates need to work in the interests of the child and represent their view, which by an adult standard may not be their best interests.
- Advocates are needed because clients need someone who is smart, knows the system, and is articulate and knows how to approach an issue. The Advocates Office provided true advocacy; made sure that people had the right information and would propose good solutions. The individual advocacy role is gone.
- The Advocates Office staff was excellent. It's a service that is missed by regional staff. Objectivity is important when acting as an advocate. As a RED, it was good to work with advocates.
- Advocacy office had a good tracking system that would allow the office to see trends developing; would be criticized that it was not evidence based – i.e. grounded in statistics but the complaints were like a canary in the mine – could be an indicator of a problem. Complaints often would point to themes or trends in the ministry. Not just core complaints but also learn from what goes on in the system.
- The Ombudsman's Office saw the need for a child advocate function early in the 1990s. Impartiality is important in these matters, and the Ombudsman Office was well placed to offer these services.
- They created a separate team to deal only with child and youth issues. With funding cuts, this team disappeared, although they have tried to maintain the function. They had expected a big increase in the number of call to the office after the Children's Commission and Child, Youth and Family Advocate Office closed but this didn't materialize. This could be due to lack of public awareness of their role. The Vancouver Office was closed.



- The Ombudsman's Office budget has gone up slowly and they are doing a tour of the province to give a higher profile to the Office. Children's calls are always taken right away. They get priority in the office.
- The Ombudsman's Office does not fill the gap. It's up to the client to prove administrative unfairness and these people are not well equipped to do this; they don't know how. The old Advocates Office would teach them before but now that service is gone. The Ombudsman Office is not child friendly.
- Advocacy needs to be appropriately resourced; need to have regional offices to bring the functions closer to the community. Individual advocacy is the most important function for the people, and the least accessible right now.

On the Child and Youth Officer (CYO):

- Calls to the Office went down by 75% when the Child, Youth and Family Advocate Office was closed. The perception was that there was no longer an Office to go to when both the Children's Commission and Advocates Office closed.
- Front line staff often does not have any knowledge of CYO. The Office is not visible; no one hears from it. There is little engagement with the community. People are not being referred to the CYO. Opportunities to be heard are extremely limited.
- Jane's vision was different. It became more of a think tank vs. an oversight body, with a much diminished advocacy role. It focused on producing position papers and project based initiatives. It was a difference mandate and had a more systemic focus. It was far less hands on. The role of individual advocacy was undervalued, in favour of having a systemic voice. The role is different but has value from a systemic point of view.
- The team approach changed; everyone delivered advocacy services, but not in as comprehensive a way. Adults were referred out to the ministry. The concept of extraordinary circumstances was introduced, which was not well understood. The Office has become more case focused recently.
- The role of the Office was never that clear. There didn't seem to be a clear mandate for individual advocacy, only systemic advocacy. The Office does not do the advocacy role well. The former Advocates Office was much more effective, and had the expertise and was sensitive to the issues.
- The Office seemed to have difficulty figuring out what its role was. While their projects were interesting, they are not influential. The CYO is seen as weak; preferring to take a neutral stance or act as mediator.
- The Office is evolving. Office staff now has a regional responsibility plus certain portfolios. Accessibility to services continues to be an issue.

On natural and community advocates:

- Needs to be self advocacy in the community; capacity building is important work. An office can't possibly manage all the advocacy needs and natural and community advocates are an important ingredient in the overall structure. However, you cannot ask that the community provide the service and then not fund it. First Call had their funding withdrawn.
- Need to educate the public and the system itself about advocacy and its benefits. Other government service providers can also be good advocates. Advocacy still has some negative connotations.



- Natural and community advocates are not taken as seriously by the system, and it therefore impacts on their ability to advocate on behalf of the client. Natural advocates are often marginalized themselves.
- A professional office (CYO) understands the channels within the system, making them more effective at dealing with the issues. There needs to be an outside office to ensure a balance of power. If community advocates find that they are being dismissed they can call for help from the Advocates office, who will then use their power and influence to get things back on track.
- There is fear of retribution by community or natural advocates, particularly by service providers/foster parents as they are not paid for advocacy work unless specifically detailed in their contracts. They also fear that they will be black listed by the ministry if they speak out.
- Community advocates need to be properly trained so that they are advocates for the individual's voice, not the position; or to recognize clearly when they are advocating for a systemic change. They need to be trained in mediation.
- Need to look at the Guardian ad litem model⁶ used extensively in the US. It could be adapted to child protection matters. You could tap into the many highly trained people now moving into retirement.

On Aboriginal aspects:

- Aboriginals have never accessed advocate or complaint resolution services to the same extent as non-Aboriginals, even when the Child, Youth and Family Advocate Office and the Children's Commission was there. Their statistics would show that those agencies were not very involved to the same extent with Aboriginal issues as they were with non-Aboriginal issues. Any programming around Aboriginals seemed to be an add-on rather than specific programs.
- That window to the advocacy/complaint resolution service dissolved when those offices were closed and the Children and Youth Office (CYO) was established. The creation of the new CYO undermined the work that had been done by the previous Advocate's office and they are now even further behind. The CYO is not visible to the Aboriginal community and they do not play a role. They have established a Deputy Child and Youth Advocate but that position was only staffed for 10 months, and now it is vacant. That office is not resourced well enough to do this kind of work.
- An Aboriginal advocate is needed to be a provincial spokesperson; someone who Aboriginals can point to and who can advocate on their behalf. No such person now exists. The person must be given the authority to speak on behalf of Aboriginals. Need a strong voice. Issues are unique to that community and we need specialized people in that position. Advocacy needs to be both for the individual and for the system.
- Not necessary to create a separate office but requires an independent person with specialized skills, to make inroads into the issues, open up the lines of communication,

⁶ The Guardian ad Litem Program recruits, trains, and supervises volunteers who represent the best interests of abused, neglected, and abandoned children in court proceedings. Guardians also sometimes represent children in child custody issues and in criminal cases. The Guardian ad Litem is certified based on standards which include background checks and required specialized training.

establish a presence and set up a provincial system; needs to be seen as credible in the eyes of the Aboriginal people.

On Independence:

- It was never clear on why the Children's Commission reported directly to the Attorney General and the Advocate was an Officer of the Legislature. The Commissioner and now the CYO appear(ed) to be fine with it; they were never interfered with in any way. There is criticism from people outside the system but in reality no one is constrained. Staff always feels (felt) independent from the Ministry.
- Joyce's office did not necessarily benefit from being an independent body. As a watchdog they were not taken seriously. Need to strike a balance between critical analysis and collaborative work. A self righteous attitude is dismissed. Joyce's reports were hard hitting and very critical with the result that ministry tended to mobilize to defend itself. With Jane's approach there is more collaboration with people, but it takes time to see the effect. The Office has tended to be invisible, partnering with people and working through facilitation.
- Having an advocate function inside Ministry of Attorney General and not in MCFD is enough removal to ensure independence.
- If it is kept within the ministry, then there needs to be build in safeguards, for example an all party appointment rather than through OIC and clear terms of reference for the work, agreed to by all parties.
- Statutory independence needs to be there; it needs to be an Officer of the Legislature. Whether you act independent or not, perception is key; can easily be seen to be acting in the interest of the government when you are within the system. It worked well for the Child, Youth and Family Advocate Office.
- Establish an ombudsman like process; an individual looking at fairness and facts. The approach is better accepted by the person complaining because it resides outside of the government. Remaining in the ministry means that it is affected by budget considerations to a greater extent and is included in the strategic plan of the ministry.
- There needs to be clarity in the mandate; however, the reality is that the Office will reflect the values and personality of the person in charge.
- The length of term in Office is important; it must span elections of governments to try to foster some stability and maintain independence of action and thought.

On the complaints process and the internal workings of the Ministry:

- Mid 1990s the complaint process was formalized but policy meandered until there was a Review Board and then the introduction of the Children's Commission. Regional process became fairly consistent, with the introduction of the Quality Assurance managers. Health authorities do not have a complaint resolution process so the Ministry is ahead of many public services in some respects.
- Each region developed their own complaint resolution process and it therefore varied to some degree but the processes were built on the work that Jane Morley had done with the Ministry, with a greater emphasis on alternative dispute resolution process. There was training of individuals to improve the process, which lead to significant improvements in the process. The advocacy role was built into the complaint resolution process. The process is very dependent on the leadership in the region. It's always the first area to be cut when there are budget troubles.

- The complaints process works well, although its effectiveness varies by region. If you look at the statistics, you will see that the vast majority of complaints are resolved at the first stage.
- The internal complaints process does not work well. It varies greatly by region, and the process is fuzzy. Internal reviews are not effective at this point because there is no trust. People used to use the complaints resolution process before because that was the gateway to the Children's Commission. But with that office closed, people just don't bother.
- "Trust me" approach has not worked. Ministry staff does not understand the concept of fairness. The system uses the ministry to review itself; in theory it should work, but it doesn't because of an entrenched culture and human failings that come into play in any large organization. Ministry needs to be prepared to acknowledge that it is a large, bureaucratic institution that fosters institutionalized behaviours.
- There were workforce adjustments; headquarters took the biggest hit on the corporate services side. Need to have a complaint resolution process at the headquarters level to encourage accountability. Ombudsman now plays a bigger role in administrative reviews; people are referred to his office. Wonder about the effectiveness of the Ombudsman Office; tend to focus on administrative fairness and do not second guess decisions. Could be more effective if they came down a little harder on the ministry.
- Need qualified people to do complaint reviews. There was an issue around classification levels. People who were reviewing other people's decisions were at a lower classification level, creating conflict in the organization. It points to a lack of recognition of the value that these positions bring to the whole process.
- ADR has always been a tool available to workers and complainants, but it was used in situations that were beyond being resolvable. Mediation can be seen as trying to bargain away the voice of the child. It diminishes the complaint and negates the issue. This is something that needs to be guarded against in a situation where there is such a difference in the balance of power.
- The complaints resolution process needs to be as close as possible to the source, and handled informally to encourage good relations.
- People have a negative view of social workers – harried, uncaring, overworked, and unprofessional. This view is reinforced through the media, TV shows. The university (UVic) promotes a view that the child welfare system is oppressive and essentially social blackmail; need to work to change this negative view and support the staff that is providing a critical role in our society. Many are not registered social workers; adds to the perception of unprofessional staff.

On an independent review body:

- External process should not be the Children Commission model as it didn't work well. The Commission could recommend to the ministry that they reconsider their position, but if the ministry would not reconsider their position then they had to explain why, and then the issue was made public. In one case, the Commissioner was temporarily appointed director, just to resolve a situation where a director would not accept a recommendation.
- If you accept that there is a problem with the culture within the ministry, then recommending changes to address issues is not going to work. There must be the ability to direct change. If you have a public child protection system, then it needs to be



held accountable and its performance needs to be monitored. It needs to reflect the experience of the people being serviced by the organization. Need to guard against a solution that offers an easy answer.

- Need to give ministry staff credit for resolving many issues that are brought to them. For those cases where they can't be resolved internally by the parties, need to be able to bring in an outside party.
- Complaint resolution process proposed by Jane Morley was not accepted by potential regional board members. They saw that they had an obligation to know from an independent observer what was going on internal to the organization, to fulfill their responsibilities as board members.
- If you have an outside body for complaints review, then would need to carefully define the parameters of their work; protection issues are very difficult; would interfere with the Directors authority to make decisions.
- Policy decisions sometimes have unintended consequences; need an independent oversight body to allow the ministry to reposition itself on certain matters; take a second look and accept some advice from outsiders. There is mistrust and a perception of bias in a system that reviews its own performance.
- An external process is needed but probably not as decision maker; rather as recommendations that compel the ministry to reconsider its decisions so that the same thing doesn't happen again.
- Try an Appeal Board. Ministry should continue to be the decision maker but exercise the ability to influence the Ministry and have them reconsider and rethink their decisions. Focus on the rights and interests of the child. If a decision maker, then the scope could be around refused service, for example respite care; not case specific issues.
- Appeal Board model might work but issues are very complicated in child protection matters so may not be appropriate. Would need to have a very well defined scope; ability to rescind decisions or confirm them but not make new decisions. Need very tight timelines; lots of people available to form panels, province-wide.
- If there is going to be an outside body, its mandate and role needs to be clear. Needs to be a clear process. It's too hard on staff if it lacks clarity.
- There needs to be an independent office to review the workings of the ministry and report out. An Office working inside the ministry can't work with the ministry to develop the policies, and then be expected to review those policies from an independent perspective.

On scope of services:

- Scope has never really been an issue. The legislation allows for addition of scope. Need to be able to advocate for all children receiving services from government but budget is an issue.
- CYO gets lots of calls about child custody. There is no advocacy service for these people and are therefore referred out.
- Scope was never that clear; Children's Commission would frame the complaint to fall within its mandate. Complaints were broadly interpreted.



- Children's Commission scope was not just child protection, but that tended to be where the most complaints were generated. They also got involved in the funding for autism issue to a great extent.
- Youth custody issues are not part of the CYO's mandate. The Ombudsman's Office can look into these matters.

General comments:

- The mandate(s) need to be in legislation, in separate sections that address each functional area. Advocacy, complaints, monitoring quality, must all have statutory provisions. Use a human rights approach. Use the UN Convention of Children's Rights to measure the effectiveness of the system.
- Continued need for the Ombudsman for broadly based complaints about government services. But with kids, it is different; need a child centered focus which is different that an ombudsman perspective usually. An Ombudsman is neutral and fair, but in advocacy you need to represent the views and interests of the child, so this would be an anomaly.
- Need stability within the system; government is always changing the structure; never gives an office the chance to get established in the public's mind.
- If put into one office need to build a firewall between the different arms – head of the office would represent arms when making recommendations to the government on systemic issues.
- Need to have a number of sources of information when reviewing or monitoring the actions of the ministry – 360 degree view – complaints, deaths and review of plans of care.
- There needs to be better collaboration between ministries when looking at certain issues, particularly access to service issues. Have approached the local Health Authority to review issues and make recommendations jointly, but they do not seem to be interested; it has something to do with the legal advice that they are getting.
- There needs to be cross ministry reviews on some issues. Even within the ministry, there are boundaries – mental health, justice, and child protection; each does its own review. Need better integration. Have made some progress here but still a long way to go.
- The process needs to be flattened out and less drawn out. There were too many levels that people were forced to go through and it made the process too slow and unresponsive to the needs of the child; should consider having a choice where people can opt out of mediation and go straight to an independent review of their case. Need a system that is responsive and timely.

6. FRAMING THE ISSUES: DISCUSSION, ANALYSIS AND OPTIONS

The discussion of these issues is divided into two parts:

- a discussion of the mandate and role of an advocate's office, the need for independence, and the role that the community can play in advocating for children both individually and systemically.

- a discussion of the current complaints process, its effectiveness, and whether an independent body is needed to respond to complaints that cannot be resolved internally to the Ministry and if so, what the authority of that body might be.

In addition, comments are provided on whether these two functions can reside in one organization.

6.1 Advocacy

Current State of Advocacy:

Currently, advocacy services for children are provided through the Child and Youth Officer and community organizations. In addition, there are likely other government services that provide some form of advocacy services that may include children; however, these were not included in this review.

While the Child and Youth Officer advocates for children and youth, the effectiveness of that office has been questioned. The focus of the Office has, according to many of those interviewed, been almost solely on systemic advocacy, to the detriment of those in need of individual advocacy. Awareness of the Office and access to services is seen to be very low.

The CYO defines its mandate as support for access to relevant services, independent observation for their effectiveness and advice to government on how to improve those services. Because of the broad mandate of the Office and the limited resources available to it, the Office has chosen a largely systemic approach, with a strong community capacity building element. The Office has recently been more active in trying to establish a more public presence, and increase its efforts in individual advocacy.

Scope Of Mandate:

The scope of the mandate in this discussion refers to the responsibility of the advocate to provide services across a breadth of programs or services provided to children by government, as opposed to the functional scope of the advocate itself. For example, the scope of the mandate could be all services provided to children by government, or limited to child protection services (or somewhere in between). The functional scope could include advocacy services, handling complaints, etc.

Within this context, the scope of the mandate of the former Child, Youth and Families Advocate, the Children's Commission, and the current Child and Youth Officer was not an issue with those interviewed, and was not an issue that was raised frequently in the submissions that were reviewed. However, it was clear that the scope of the mandates of the different offices was not always well understood.

The current Child and Youth Officer has a clearly stated broad mandate to cover all government provided or funded services to children and youth. The specific areas mentioned (although the Act does not limit the mandate to these) are:

- services provided under the *Adoption Act*, the *Child, Family and Community Service Act*, and community living support for children and youth under the *Community Living Authority Act*;
- early childhood development and care services;
- mental health, addiction and youth justice services; and
- youth to adulthood transition services.

The scope of the mandate could clearly be interpreted as extending beyond what has more traditionally been the scope i.e. the services provided by the Ministry of Children and Family Development. For example, advocacy services could be provided to services delivered by the health authorities, or the education system.

The Children's Commission scope of mandate was less clear in legislation and was intertwined with the functions of the Commission through reference to designated services and prescribed ministries. By regulation, a designated service was a service or program provided by the Ministry for Children and Families for a child in care, a child in the charge of the director or a child in the director's care under the *Child, Family and Community Service Act* or the *Family Relations Act* for the purposes of section 4 (1) (d) and (f) (ii) of the Act (death or injury review and complaints). A prescribed Ministry was the Ministry for Children and Families for the purposes of section 4 (1) (d) and (e) of the Act (death and injury reviews and monitoring of services). The Commission could do special investigations and prepare reports in matters that affected children, or do or encourage research into general matters affecting children. Interviewees were unclear about how the Commission determined what issues would be heard by Tribunal, and suggested that issues were reframed in such a way that would allow them to be heard by the Tribunal. Similarly, the mandate of the Ombudsman's Office to act on behalf complainants was often not clear. While the Office is there to respond to people making complaints about government services, the Office is to respond to issues of "administrative fairness". There was lack of understanding about where administrative fairness and case management decisions crossed over.

The Child, Youth and Families Advocate mandate was structured in a similar way, using "designated Act" and "designated service" as a way of permitting expansion of scope into the future. Most interviewees thought that the Advocates Office was totally unfettered in the scope of her work, although this was not the case, and was in fact the subject of a recommendation by both the Child Advocate and the Ombudsman in an annual report.

A review of the Ontario advocate's office commented on the same issue, noting that the legislative mandate is vague and did not reflect what the work that the Advocate was doing; that there was no public document that clearly outlined the scope of the office's mandate. That report recommended that the legislation should clearly state the mandate, role, powers, independence and accountability and that it be apparent when reading the legislation.

A broadly legislated mandate sets the expectation that functions and services provided under the legislation will apply to the full scope. While an advocate's office may choose not to be involved in some areas for practical or other reasons, the legislated mandate and purpose of the Office needs to be clear to those working in the system. Conversely, if the mandate is narrow but the office wants to be involved more broadly, this needs to be addressed through changes to legislation. An unclear mandate can lead to confusion and sometimes frustration in the system, and the possibility that services are not provided where they are needed.

Both Sweden and Norway use a form of advisory panel with expertise in children's issues to support the Office and help set their strategic direction. Where a broadly based mandate is provided in legislation, as is the case in both of these countries, an advisory panel may provide a useful forum to debate the scope of the services to be provided and direction of the Office, and ensure that the discussions take place in an open and transparent way. In Connecticut, an advisory committee to the Office of the Child Advocate meets with the Child Advocate and staff to review and assess patterns of treatment and services, policy implications, and necessary systemic improvements. The advisory committee also provides an annual evaluation of the effectiveness of the Office.

Functions Of A Child Advocate:

The European Network of Ombudsman for Children (ENOC) summaries the aims of existing member independent offices; not all offices pursue all these aims, in particular, there is variation in offices as to whether or not they deal with individual cases and complaints from children:



- to promote full implementation of the Convention on the Rights of the Child;
- to promote a higher priority for children, in central, regional or local government and in civil society, and to improve public attitudes to children;
- to influence law, policy and practice, both by responding to governmental and other proposals and by actively proposing changes;
- to promote effective co-ordination of government for children at all levels;
- to promote effective use of resources for children;
- to provide a channel for children's views, and to encourage government and the public to give proper respect to children's views;
- to collect and publish data on the situation of children and/or encourage the government to collect and publish adequate data;
- to promote awareness of the human rights of children among children and adults;
- to conduct investigations and undertake or encourage research;
- to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems, for example in institutions and schools, and including children's access to the courts;
- to respond to individual complaints from children or those representing children, and where appropriate to initiate or support legal action on behalf of children.

Celine Giroux, vice president of the Commission des droits de la personne et des droits de la jeunesse, in a speech presented at an international children's rights conference in Montreal in 2004 (given on behalf of her organization and the Canadian Council of Provincial Child and Youth Advocates), summed up the role of an advocate as:

- to help children and their families gain access to the services they require;
- to monitor the quality of the services they receive;
- to advise our government on ways to improve those services;
- while pursuing those goals, maintain a focus on the promotion and defense of children's rights;
- making the best interest of the child the primary consideration in any actions affecting the child.

The functions of a children's advocate need to be clearly established in legislation. The advocate will influence the emphasis placed on the various functions. However, these should be grounded in the mandate of the Office, and the priorities established through legislation. Funding levels will also impact the degree to which these functions can be performed. The breadth of the functions assigned to the Office must be reflected in the level of funding provided to the Office. This issue was acknowledged by the New Zealand's Children Commissioner in an address to the new Minister. She noted the need to prioritize the focus of the work of her office and achieve the best outcomes possible for children, within the budget of her Office.

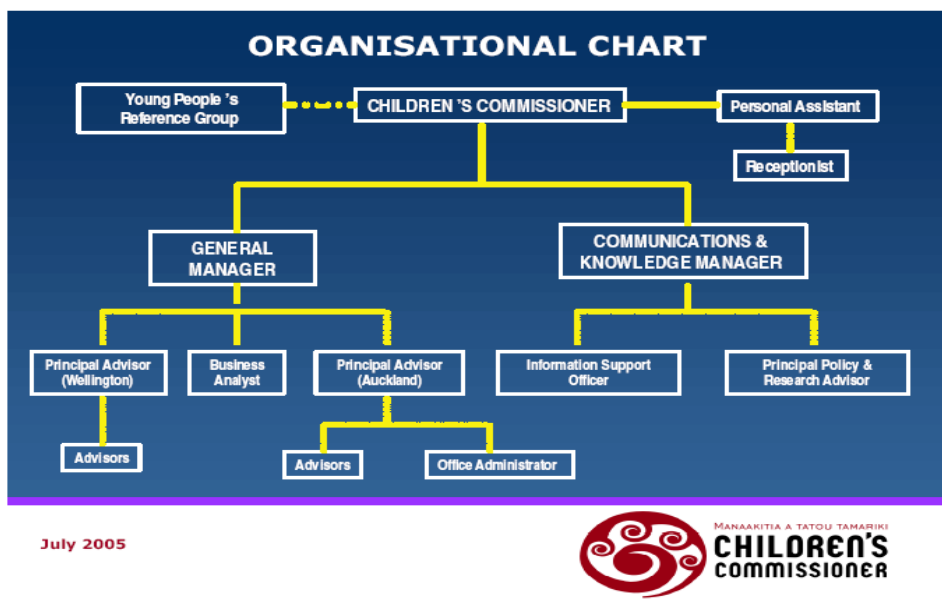
Some organizations focus only on the systemic aspects of advocacy and monitoring of government services. However, these organizations tend to be in the minority. It is more common to have a full breadth of responsibilities, particularly in Canada.

The functions noted above reflect fairly closely the functions of the former advocate's office and children's commission. Some people interviewed felt that there needed to be separation of advocacy and the monitoring/complaints review functions by having separate organizations. Their reasoning was based on the difference in the role of advocate, where the person is representing the child's views and interests, and the role of an independent review body looking at the merits of a complaint or monitoring the system, where impartiality was important.

The Australian Law Reform Commission addressed this point as follows:

“Some commentators see problems in locating within the one body different roles in relation to children — complaint handling, advocacy and policy coordination. Complaint handling and advocacy are sometimes regarded as incompatible and open to conflict of interest if combined. These are valid concerns. Locating functions in separate organizations is clearly one way of dealing with them. However, the two roles may be played by the one organization without undue conflict provided appropriate functional divisions and procedural safeguards are observed.”⁷

New Zealand does not organizationally separate the advocacy and complaint resolution functions. There are two arms within the organizational structure: an operational arm with advisors who carry out monitoring and investigation functions, advocate for children’s rights, and work with communities to encourage and support child advocacy; and a communications arm that focuses on strengthening communication, research and information base, including the development of a Child Rights Information Line. Saskatchewan has a similar structure.



Whether these services are established in an Ombudsman Office, a Children’s Commission, or Advocates Office, or some other appropriately named Office does not really matter. The key is that the functions are provided in a coordinated and planned manner, with a clear vision of the future, an understanding of the mission, a guiding set of principles, and a plan for reaching the specific goals that have been set by the organization.

The Core Services Review commented on the notion that the Children’s Commission had a different role than the Ombudsman when reviewing complaints. The difference was seen to be that the Children’s’ Commission was looking at the substantive issue of the decision, and not just whether the process was administratively fair. However, as was noted, the mandate of the Ombudsman can be quite broad under section 23, which allows the Ombudsman to investigate whether an action and practice is “otherwise wrong”. The practical difference was more a reflection of the attitudes of the Offices. The Ombudsman’s Office tends to defer to the professional expertise in the Ministry, rather than second-guessing them. This attitude

⁷ Australian Law Reform Commission, 1997.

alone could make a big difference in the relations between an oversight office and the Ministry.

Individual and Systemic Advocacy:

Without exception, those interviewed spoke of the need for individual advocacy in the system. The service provided by the former Child, Youth and Family Advocate Office was seen as one of the most valuable services of that Office. Joyce Preston described the individual advocacy work of their Office as the “absolute soul” of their work. Ministry staff all commented on the value of having an advocate available to intervene in a dispute and help give voice to the child’s complaint and represent their interests and views. The lack of individual advocacy services provided by the Child and Youth Officer was a point of frustration from almost everyone interviewed.

Not all advocacy offices include individual advocacy in their mandate, and those that have both individual and systemic advocacy in their mandate struggle to find the appropriate balance. BC is not unique in this regard. Sweden’s Children’s Ombudsman does not focus on individual cases yet is regarded very highly as being an effective children’s advocate. Saskatchewan’s focus was on the systemic advocacy function when the child advocate office was first established. However, the experience of the office led them to the conclusion early in the first mandate that the office needed to shift to more of a role for individual advocacy. New Zealand had seen a shift in the opposite direction. The focus on individual complaints/advocacy was beginning to severely limit their ability to address systemic issues. Their conclusion was that by identifying solutions to systemic issues that they could begin to make an impact on services for children. To help offset this move away from individual complaints/advocacy, they have committed to assisting other agencies to develop child-friendly complaints systems.

Regardless, most jurisdictions, particularly in Canada, see individual advocacy as one of their primary roles. The individual advocacy provides a window into the system and a better understanding of the issues faced by clients of government services. Many people commented on the fact that these clients are the disenfranchised and are not empowered to take on a big bureaucracy that holds such power over their lives. They do not know their rights and have trouble navigating the system. An advocate is often needed to help them resolve their issues and have their voices heard. This service seems to have been lost in BC.

Role Of The Community In Advocacy:

One of the issues faced by offices providing both individual and systemic advocacy, and alluded to previously, is the capacity of the office to manage both effectively individual and systemic advocacy without undermining effectiveness of either or both services. One of the ways that this can be addressed is by building capacity within the community to provide individual advocacy.

The development and support of natural and community advocates was a focus of the Child, Youth and Family Advocate, and continues to be a focus of the current Child and Youth Officer. The Child, Youth and Family Advocate, while providing individual advocacy services to many people, used the community to support clients wherever possible. Approximately 85% of their calls were handled by referring and connecting a client with services in their own community. Many callers were supported in learning to advocate for their own issue. The current Child and Youth Officer similarly encourages advocacy by natural and community advocates.

The importance of the natural and community in advocacy is supported by current literature. Natural advocates are the people that are the closest to the child, and the people that are most trusted by the child to listen and represent their views.

There were a number of issues related to natural and community advocates that were raised in the interview process:

- that natural advocates are not always available to a child or youth;
- that natural and community advocates are often dismissed by the system;
- that community advocates have lost government funding in a climate where government provided services were extremely limited;
- that community advocates need to be clear on their motivation and the role that they are playing (individual advocacy or systemic advocacy).

All jurisdictions reviewed place an emphasis on building capacity within the community for advocacy. Natural and community advocates play a crucial role in negotiating on behalf of children in many of the forums where children receive services from government, such as the school system, the health system and income support system. Children are best supported by those with whom they have a relationship and in whom they trust. These advocates exist in non-government organizations, community centres or legal centres. However, they need to be supported so that their advocacy work is effective. They require training and encouragement, and a clear understanding of the work that they do.

Natural and community advocates have limitations however, as noted above. Volunteer organizations often fluctuate in terms of their capacity to provide service. A large organization such as the Ministry of Children and Family Development can be confusing and intimidating. A review of the Children's Advocate Office in Alberta in 2000 cautioned that the cost of providing these support services and building capacity within the volunteer sector can sometimes be surprisingly expensive for the benefits realized. Any work in this area needs to be carefully considered and evaluated to monitor the benefits. Regardless, many calls can be appropriately directed to services within the community. Knowing who these organizations are and providing support to them as needed is an essential element of an advocates function. Community advocates can also be an important source of information in identifying systemic issues that need to be examined.

Their role is recognized in the Convention on the Rights of the Child, and by the Committee on the Rights of the Child.

Public Awareness/Access to Services:

As mentioned, many people commented on the lack of individual advocacy services being provided now by the Child and Youth Office.

When the Child and Youth Officer took the functions of the Child, Youth and Family Advocate, the number of calls fell by 75%. The close of the Advocates Office and the Children's Commission was somehow interpreted as an end to these services, rather than a transformation of service delivery in a new Child and Youth Officer. Many people commented on the problems that the new Office seemed to have in establishing its presence and creating a vision.

This lack of awareness of the Child and Youth Officer has not changed since the Office started up. In 2001, the last full year of operation, the Office of the Child, Youth and Family Advocate received almost 3000 calls. The Child and Youth Officer in 2004/05 received 750 calls. On April 1, 2005, a new advocacy team was created and the Office undertook increased promotion of its services. This has had a slight impact on the number of calls.

Again, this problem of making the community aware of the service is not unique to BC. Saskatchewan's Children's Advocate has noted in her annual reports that smaller communities, particularly in more remote northern regions of the province, seem to be unaware of the existence of the Office. To combat this, the Saskatchewan Children's Advocate Office has undertaken specific community outreach programs to increase awareness.

In 2001, the Saskatchewan Office also embarked on a project to develop an interactive presentation on rights and advocacy for elementary school children. The goal of the project was to find the best way to develop and deliver information to children and youth on rights, self-advocacy skills, skills to advocate for others, and the role of the CAO.

When the Manitoba child advocate's office became an independent office, they undertook a concerted effort to make it easier for children and youth to contact the Office. The Office of the Children's Advocate moved to a ground floor location to be more accessible to the public and installed prominent storefront signage to be more visible. A new child-friendly logo was created and incorporated into all of the Children's Advocate's communications and outreach materials. Communications and public information materials were specifically prepared for youths and children (see Appendix D). Materials included information brochures directed to three levels of readers, business cards, stationary, pins, crayons, notepads, door hangers, computer mouse pads and decks of playing cards. The majority of the items were created exclusively for distribution to children and youth in care.

Services to Aboriginal Communities:

Awareness and access to services appears to be even more of a challenge in aboriginal communities. The former Child, Youth and Family Advocate and the current Child and Youth Officer have worked to address this concern. A position dedicated to Aboriginal services has been created in the Child and Youth Office. Unfortunately, this position, though staffed for 10 months, is currently vacant.

The need for a separate office for an Aboriginal advocate was discussed during the interview process. There does not appear to be a demand for this, however, there is need for greater attention and focus to this problem. Saskatchewan and Manitoba face similar challenges. Collaboration with these provinces on strategies to address services to aboriginals might be an option worth pursuing, possibly through the Canadian Council of Provincial Child and Youth Advocates.

It was suggested that an Aboriginal advocate is needed to be a provincial spokesperson for Aboriginal issues, someone who Aboriginals can point to as an advocate on their behalf. The person must be given the authority to speak on behalf of Aboriginals. There are issues that are unique to that community and specialized people with specific knowledge are needed to fill that type of position. Advocacy is needed for both for the individual and for the system.

In Manitoba approximately 80 percent of the children and youth involved with child and family services are Aboriginal. The Children's Advocate is placing greater emphasis on including staff with experience working and living in First Nations and Métis communities. The Office also makes a concerted effort to get to as many communities outside Winnipeg as possible each year. In 2001, the Office submitted a funding proposal to the Legislative Assembly for establishment of sub-offices in Thompson and Opaskwayak Cree Nation. This request was not granted. However, the process itself generated cooperation between the office and groups, agencies and communities in Northern Manitoba that had not previously existed.

Promoting the Rights of Children Generally and Ensuring Government Accountability:

Many countries base their child advocacy legislation on the rights of the child as set out in the UN Convention on the Rights of the Child (CRC) (Appendix A). The rights of the child are used to establish the underlying principles which guide the Office in its work. The CRC was adopted by the UN in 1989 and ratified by Canada in 1991. The Convention applies to all children and young people under the age of 18. It has 54 articles covering civil and political as well as economic, social and cultural rights. The Convention recognizes the fundamental importance of the family to the growth and well-being of children and the right of parents, families and caregivers to guide children in the exercise of their rights under the Convention.

There are four key principles:

- best interests – in all actions concerning children, the best interests of the child shall be the primary consideration;
- non-discrimination - the rights in the Convention apply equally to all children;
- participation – all children have the right to express their views on matters affecting them and to have those views given due weight in accordance with the age and maturity of the child; and
- right to life, survival and development – every child has an inherent right to life and parties to the Convention are obliged to ensure to the maximum extent possible the survival and development of the child.

While the use of the CRC is usually set within the national context (Canada does not have a child advocate), it can also be used as a lens to examine the effectiveness and impact of provincial government policy on the rights of the child. Both Alberta and BC have been assessed by non-profit organizations using the CRC as a lens.

While the Child and Youth Office makes material on the CRC available to the public, the federal Department of Justice has been particularly critical of the lack of awareness of children's rights in Canada. They have recommended that child advocates contribute to educating communities, partnering them and working on initiatives, and monitor the system to ensure that children's rights are respected⁸.

The ability of the advocate to influence and monitor programs that serve children outside of the traditional child welfare system needs to be addressed. Even on issues of child welfare, there are difficulties in addressing issues such as access to services outside of the direct scope of the social worker. The split of the former Ministry of Social Services into the current two ministries is an example of the administrative barriers that can be created by the bureaucracy. Often these ministries are working with the same families, but the organizational structure makes it difficult for workers to share information and work together in finding solutions for their common clients. The jurisdictional and administrative barriers make it difficult for ministries to work together. The advocate office could play an important role in creating a forum where some of these issues could be addressed.

Independence of the Office:

There was considerable difference of opinion on whether an advocate office needed to be an Officer of the Legislature. No one disagreed that the advocate needed to be independent, and no one suggested that the former or current advocate or children's commissioner have ever been influenced by the government. However, the majority of people felt that there was a need to address the perception that the advocate role was a part of government or that it

⁸Department of Justice Canada: ***Child Advocacy Sector Round Table On Youth Justice Renewal 17 January 2000***

lacked an independent voice, by making the position statutorily a body outside of government, similar to other Legislative Officers, such as the Ombudsman and the Auditor General.

Certainly, the majority of children advocate offices worldwide are given some form of statutory independence. In Canada, Saskatchewan and Manitoba have advocates that are appointed Officers of the Legislature, reporting at least annually to the Speaker. In Quebec, child advocacy is part of the human rights commission, while in Nova Scotia, it operates within the Ombudsman's Office. In Alberta, the Children's Advocate is an Order In Council appointment upon the recommendation of the Minister. Internationally, most countries have made the position independent of the government.

In jurisdictions where the Office is part of government, the ability of the advocate to be independent is often challenged, at least from a theoretical point of view. The most recent example is from Ontario, where a review of the Office of Child and Family Service Advocacy was conducted by the Ministry of Children and Youth Services. In Ontario, the Advocate is part of the Ministry. That review revealed significant concerns about the perceived lack of independence of the Office and the effect that it had on its credibility. The review process recommended that the Advocate be an Officer of the Legislature. The Ontario government has committed to making that change, although legislation has yet to be introduced.

The Australian Law Reform Commission noted that the role of the Children's Interest Bureau in South Australia as an advocate for children in South Australia was hampered by its location within the department it is designed to monitor. In Manitoba, the Children's Advocate attributed the increased demand for her services partly to now being an independent office and people feeling more comfortable voicing their concerns to someone who is separate and apart from the system.

Some people argue that being an Officer of the Legislature hampers the advocate's ability to influence change within the system. Other options exist to give both appearance and substance to independence and are worthy of further investigation. For example, both New South Wales Children's Commission and New Zealand's Children's Commission are an independent Crown entity. As noted in a recent briefing by the Children's Commissioner for a Minister of the New Zealand government in November 2005:

"It was decided that independent Crown entity status, rather than being an Officer of Parliament, would enable me to develop relationships with agencies and encourage free and frank exchange of information and advice. My status enables me to guide and monitor agencies across government and the wider community to ensure a focus on children.⁹

Independence is strengthened by having a position that is appointed for more than a typical government term. A five or six year term is common. The Ontario review recommended a five year appointment, renewable for one term. Selection by an all party committee also strengthens the notion that the Advocate is a non-partisan appointment and free from government interference. The European Network of Ombudsman for Children (ENOC) stresses the importance of independence from government (Appendix C).

⁹ **New Zealand Children's Commissioner Briefing for Incoming Minister 2005**
http://www.occ.org.nz/childcomm/briefing_for_incoming_minister?eZSESSIDchildcomm=f07759147f89988971722aaeddd0b560

6.2 Complaint Resolution Process

Current state of the complaint resolution process:

As previously outlined, the complaint resolution process is an escalating internal review within a regional structure. Failing resolution at the regional level, a complainant will be directed to an outside intervener, usually the Ombudsman Office.

Briefly, a complainant is instructed to first try to resolve the issue with the social worker. If it cannot be resolved at that level, the complainant can ask to have the team leader review the issue. A complaint consultant oversees the review process. If unresolved, the Manager will review the dispute, and make a decision. Complainants must be informed of the decision in writing within a total of 60 working days. If a complainant is still unsatisfied with the decision, the complainant is directed to the Ombudsman's Office, the Child and Youth Office, the Deputy Minister, or community organizations.

It is difficult to tell whether this process is effective or not. Statistics from most regions on the number of complaints have not been made available and the corporate tracking system can no longer provide this information accurately. It might be useful to compare complaint data from the past year with complaints data in the years from 1998 to 2001, when the Children's Commission was in existence, if it becomes available.

Anecdotal information on the effectiveness of the system varies, depending on the perspective. Ministry staff generally thought that the system worked well, although they acknowledged that there are regional differences. However, others suggest that the system does not work well, and that many clients just don't bother complaining because there is no point to it now that the Children's Commission is gone. The Ministry has introduced and supported alternative dispute resolution processes and these have been somewhat successful in dealing with complaints at various points in the process.

The Ombudsman Office indicated that when the Children's Commission was closed, that they anticipated a high increase in the number of complaints that came to their Office. This increase never occurred and in fact, the number of complaints actually decreased. It seems unlikely that the Ministry suddenly became more effective at dealing with complaints or that the quality of service improved dramatically. Therefore the only conclusion that can be reached is that people did not know of or did not want to follow up with the Ombudsman Office, if their issue was not successfully resolved. The reasons for the lack of use of the Ombudsman Office services are not known, although the Office has speculated that there is a general lack of awareness of the Office, or a public perception that no one was accepting complaints.

When the Children's Commission was created, there was an importance attached within the ministry to creating and supporting an effective complaint resolution mechanism. With the Commission gone, and the reduction in the budget of the Ministry, the attention paid to the complaints resolution process has eroded, resulting in a less consistent effort to maintain information on the numbers and types of complaints and monitoring the effectiveness of the process internally by the Ministry. This is probably most evident in the Complaints Tracking System, which was a system developed to provide province wide data on the type and number of complaints being received in the regions, and the ability of the staff to respond promptly to the complaints. It was a system that could quantify to some degree the quality of service to clients. The system is no longer supported, and some regions have developed their own tracking system that better meets their needs. Province-wide data is no longer available. While information can be collected from all regions and combined, the basis on which the data is collected is no longer consistent, making cross-regional comparisons meaningless.

The need for an outside body for complaints:

Many people interviewed commented on the notion that the ministry is in the best position to respond to complaints, and that a well performing organization looks to complaints as a way of promoting improvements to service. While this may be true in theory, it appears that the lack of an independent body that can investigate complaints has made the system less responsive to complaints, at least from an accountability point of view.

All interviewees agreed that there needs to be an internal process to allow for a quick resolution wherever possible, and the current process appears to meet this need to some extent and could meet it to a greater extent if given more attention and focus by the ministry, at least in some regions. It appears from the limited data made available that over half of the numbers of complaints are resolved fairly quickly at the local or Stage 1 level. Approximately 10% of all complaints go the next level (Stage 2/3) for resolution. Vancouver Island records approximately 24% of their complaints as withdrawn or discontinued. What isn't clear is what happens after that, whether people are going to the Ombudsman's Office or simply dropping their complaint. Regardless, it's apparent that not all complaints are being resolved locally. There appears to be a need for a place outside of the ministry where unresolved complaints can be heard. The numbers are not huge. The Core Review Report reported that the Children's Commission in 2000 opened 339 complaint files, and only 23 of those went to the formal route of acceptance by the Commission. Only 8 to 10 complaints went the formal panel process each year.

One article reviewed commented on the general lack of awareness of children of a complaint process and the ability to access advocate services. This was noted by both the Child and Youth Officers and other provincial advocates (see pg. 56). But even when children are aware of the complaint process, they may not complain for fear of reprisal from the system¹⁰. This fear was noted as a major factor hindering their ability to make contact with the Children's Advocate's Office in an Ontario study. Advocate offices in Canada tend to seek mediated resolutions and they have no enforcement powers. The author suggests that the over-reliance on a provincial children's advocate has resulted in the persistence of many systemic problems in the child and youth care system in Canada.

Most advocate offices include responding to individual complaints as part of their role, although not all do, for example, Scotland and Sweden. From a systemic point of view, it also provides a window into the delivery of service by the ministry and can be used to identify potential problem areas and help with the monitoring function of an outside agency, and can therefore be a valuable tool to an advocate office. How this role is organized with the advocate function varies, as noted previously. However, the argument that a separate office is needed to review complaints does not seem to be convincing, and there were no other jurisdictions reviewed that established a separate office specifically for child protection matters alone at the first stages of a dispute (i.e. before reaching a formal appeal stage).

For those situations where a resolution cannot be reached, the more difficult question is whether there should be a tribunal process of some sort to address these instances and whether the tribunal should have the authority to overturn or confirm a decision of the director, or to be able to issue orders.

While most people interviewed saw the value of an independent body where clients could take their complaints, very few saw the value of a tribunal process. It was seen as creating an

¹⁰ Grover, Sonya. Advocating for Children's Rights as an Aspect of Professionalism: The Role of Frontline Workers and Children's Rights Commissions; Child and Youth Care Forum 33(6), December 2004

unnecessarily antagonistic climate, and was slow, expensive and unresponsive to the clients needs. The Core Services Report questioned whether reviewing a decision by the Ministry was enhanced by the formal presentation of evidence with examinations and cross-examinations.

Saskatchewan does not have an appeal body for complaints. If a person is not satisfied with the results of the internal review process, their only recourse is to the Minister. The Ombudsman would be unlikely to review the issue unless the person had not involved the Child Advocate in the process earlier. The Ombudsman and Child Advocate operate under the same legislation. It is a similar situation in Manitoba. There does not appear to be a Tribunal system in New Zealand, although New South Wales has one.

In Ontario, the situation is slightly different because the Ministry is not the direct service provider. Even in Ontario, though, a formal appeal body does not exist. A complainant can ask the Minister to review the complaint, and he/she can appoint someone to review the complaint. The Ombudsman has no jurisdiction over these complaints.

Some interviewees suggested that if an appeal body was created, that the body be limited in terms of who could appeal and the scope of the complaints that could be heard. This is the approach that Alberta has taken. Any child, guardian of a child, foster parent, or other person who is affected by a decision can request an appeal if the administrative (internal) review process does not resolve the issue. Appeal panels consist of three to seven members. The appeal panels may confirm, reverse or vary the decisions. Appeal panels can only hear appeals on the following matters:

- the removal from or placement in a residential facility of a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order;
- the permitting or refusing to permit any person who has a significant relationship with the child to visit a child who is the subject of a permanent guardianship agreement;
- the refusal or failure of a director to enter into an agreement under certain parts of the Act in respect of a child who, in the opinion of that director, is in need of intervention;
- the refusal to provide support or financial assistance pursuant to section 56.1, 57.3 or 81 (private guardianship or adoption);
- any other matter prescribed in the regulations as being subject to an appeal to an Appeal Panel.

Most appeals are from foster parents around placement decisions. The Appeal Boards hear approximately 30 cases per year. While they try to get cases resolved within 4-6 weeks, the process is often slow due to scheduling problems. Decisions are final, although people can always appeal to the Supreme Court.

Regardless of the obvious disadvantages of the tribunal system, there are some that argue the need for a tribunal process to protect and foster greater compliance with children's rights. If the advocate office took on a broader mandate, the tribunal process could take on issues related to human rights violations under other statutes where services are provided to children, and where there is no currently existing tribunal process to address those rights (health or education services). The lack of good evaluation information of advocate services makes it very difficult to know whether a tribunal system is needed. The Saskatchewan Advocate in her last report asked whether her Office was making a difference; she still didn't know.

Two examples of other government appeal bodies in BC are outlined below:

- The Ministry of Employment and Income Assistance Appeal Board; and,
- The Environmental Appeal Board.

The Ministry of Employment and Income Assistance has an appeal process for its clients. The Ministry directs clients to an internal appeal process, first through the worker, and then for a reconsideration process within the ministry. A decision that results in the refusal, reduction or discontinuance of assistance, a supplement, or a child care subsidy can be reconsidered. A decision about the conditions of, or noncompliance with, an employment plan can also be reconsidered. Some decisions cannot be reconsidered, for example, a decision regarding access to an employment program, or where there are disagreements about administrative practices, such as the method of cheque pick-up or a request for a different worker. The Reconsideration Decision is a new and final ministry decision. If the client still disagrees with the Reconsideration Decision, that decision can be appealed to the Employment and Assistance Appeal Tribunal. The Appeal Tribunal is an independent, arms-length body that is responsible for the overall management and administration of the appeal process. Decisions that refuse, reduce or discontinue monthly assistance, hardship assistance and/or a supplement that is issued under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*, or a child care subsidy under the *Child Care Subsidy Act*, can be appealed. Appeals must be registered within 7 business days of receiving notice of the Reconsideration Decision. An oral hearing takes place within 15 business days and decisions are made within 5 business days of the hearing. The appeal panel will either confirm or rescind the ministry decision.

The Environmental Appeal Board is established under the *Environmental Management Act* and is a quasi-judicial tribunal with statutory authority to hear appeals from administrative decisions made under various environmental and health related statutes. In addition to hearing appeals, the Board produces an annual report, which is provided to the Legislative Assembly. The types of decisions that are appealable to the Board vary from statute to statute. The statute that provides for an appeal to the Board will also specify the people (including corporations and registered societies) who can appeal. The timelines for filing an appeal are usually 30 days, and hearings are held usually within 60 days. The Appeal Board has the authority to confirm, vary or rescind the decision being appealed.

6.3 Summary:

As noted, the purpose of this review is not to provide recommendations for action or decision. It is simply a gathering of relevant information and views to help inform the debate on the subject.

Regardless, there are some observations and conclusions that are worth noting:

- The scope of the mandate and the role or functions of advocate or oversight bodies has not been clear in the past. This has led to some confusion within the system. There still does not generally seem to be a clear direction or vision. An all party legislative committee (such as in NSW) or outside advisory panel (Norway, Sweden and Connecticut) could be one tool to help establish a clear direction.
- There is no evidence to suggest that the advocacy function and the complaints review process need to be separated by placing them in separate organizations. All advocacy offices reviewed have both functions, although some do not provide individual advocacy. More study is needed to learn how the advocacy and complaint functions are managed within a single office. The name of the Office varies across jurisdictions – Ombudsman, Children’s Commissioner, or Child Advocate.
- Individual advocacy appears to be greatly missed by the community generally, and particularly by children in care. Natural and community advocates need to be supported. Capacity building is an important part of an advocate’s role.



- An advocate could play a greater role in addressing administrative barriers between different ministries, and fostering greater cooperation between them. These ministries often share common clients.
- It is more common to have an office with clearly established statutory independence from government, although there are degrees of independence and different ways of structuring it.
- The support for an effective internal complaints process seems to have decreased within the Ministry headquarters since the Children's Commission was closed, probably due to the budget cuts taken at the headquarter level.
- The effectiveness of the complaint resolution process is difficult to assess, as there has been no standard approach to tracking complaints data over the past few years. Regional support varies considerably and is greatly determined by the regional leadership and the commitment to quality assurance and continuous quality improvement processes.
- It is difficult to know what the satisfaction level is of clients with service, but anecdotal information tends to suggest that people aren't using the complaints system because they don't know about it or they feel there is no point. This suggests that an outside body is needed to both monitor the system, and be an independent body where people can feel that their concerns will be heard.
- Of the jurisdictions reviewed in Canada, only Alberta has a limited appeal board for complaints. If a complaint cannot be addressed through the internal review process and with the help that an outside body, the remaining course of action is to appeal to the Minister or the courts. If a decision is made to establish an appeal body, careful consideration will be need to be given to the authority of the body and how that process can address the issues discussed.

Sources Consulted:

- Gove, T.J. (1995) Report of the Gove Inquiry into Child Protection in British Columbia.
- Jane Morley, Q.C (December 2001). Report on the Core Services Review of the Children's Commission.
- Chan Durrant Ltd (June 2000). A Review of the Office of the Children's Advocate (Alberta).
- Government of Alberta (August 2004). Overview of Changes to the Child, Youth and Family Enhancement Act.
- Whitehead Research Consultants Limited (August 2004). A New Model for Child and Youth Advocacy in Ontario.
- Annual Reports, Office of the Child, Youth and Family Advocate BC.
- Annual Reports, Office of Children and Youth, BC
- Annual Reports, Children's Commissioner, Alberta
- Annual Reports, Children's Advocate, Saskatchewan
- Annual Reports, Children's Advocate, Manitoba
- Websites for all jurisdictions, both provincial and international.
- Other websites, publications and articles as noted in footnotes.

APPENDIX A: PERSONS INTERVIEWED

Name	Former or Current Roles
Maureen Balcaen	Children's Services Manager, Fraser Region
Lauri Balson	Advocate in Alberta Staff to Review Board/Children's Commission
Kathy Berggren-Clive	Child, Youth and Family Advocate Office Associate Child and Youth Officer
Jeremy Berland	ADM, Child and Family Development, MCFD
Linda Carlson	Ombudsman Office
Andrea Clarke	Quality Assurance, Vancouver Coastal Region
Don Cumming	Transformation Project Manager, MCFD
Preston Guno	Associate Child and Youth Officer
Susan Irwin	Chair of Tribunal Panel, Children's Commission
Eric Jones	Ombudsman Office Children's Commission
Bev Kerr	Social Worker, MCFD Associate Child and Youth Officer
Gary McDermott	Deputy Director, Aboriginal Services, MCFD
Ian Mass	Deputy Advocate, Child, Youth and Family Advocate Office
Laverne MacFadden	Deputy Advocate, Child, Youth and Family Advocate Office A/Advocate
Bruce McNeill	Director, Fraser Region
Fred Milowsky	Executive Director, Vancouver Coastal Deputy Child and Youth Officer
Fran Sasvari	Children's Commission
Mark Sieben	A/Director, Regional Operations, MCFD
Bernd Walter	Superintendent Ministry of Social Services Chair of Children's Review Board
Tom Weber	Director, Vancouver Island

APPENDIX B: A SUMMARY OF THE RIGHTS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD http://www.unicef.org/crc/files/Rights_overview.pdf

Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child): The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country. Article 41 of the Convention points out the when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 5 (Parental guidance): Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and development): Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, name, nationality, care): All children have the right to a legally registered name, officially recognized by the government. Children have the right to a nationality (to belong to a country). Children also have the right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of identity): Children have the right to an identity – an official record of who they are. Governments should respect children's right to a name, a nationality and family ties.

Article 9 (Separation from parents): Children have the right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.

Article 10 (family reunification): Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11 (Kidnapping): Governments should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention's Optional Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.

Article 12 (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making -- not give children authority over adults. Article 12 does not interfere with parents' right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers greater weight than those of a preschooler, whether in family, legal or administrative decisions.

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organizations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 16 (Right to privacy): Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

Article 18 (Parental responsibilities; state assistance): Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children – the Convention does not take responsibility for children away from their parents and give more authority to governments. It places a responsibility on governments to provide support services to parents, especially if both parents work outside the home.

Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behaviour – ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 21 (Adoption): Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.

Article 22 (Refugee children): Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the rights in this Convention.

Article 23 (Children with disabilities): Children who have any kind of disability have the right to special care and support, as well as all the rights in the Convention, so that they can live full and independent lives.

Article 24 (Health and health services): Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

Article 25 (Review of treatment in care): Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most appropriate. Their care and treatment should always be based on “the best interests of the child”. (see Guiding Principles, Article 3)

Article 26 (Social security): Children – either through their guardians or directly – have the right to help from the government if they are poor or in need.

Article 27 (Adequate standard of living): Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28: (Right to education): All children have the right to a primary education, which should be free. Wealthy countries should help poorer countries achieve this right. Discipline in schools should respect children’s dignity. For children to benefit from education, schools must

be run in an orderly way – without the use of violence. Any form of school discipline should take into account the child's human dignity. Therefore, governments must ensure that school administrators review their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable.

Article 29 (Goals of education): Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents. The Convention does not address such issues as school uniforms, dress codes, the singing of the national anthem or prayer in schools. It is up to governments and school officials in each country to determine whether, in the context of their society and existing laws, such matters infringe upon other rights protected by the Convention.

Article 30 (Children of minorities/indigenous groups): Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child labour): The government should protect children from work that is dangerous or might harm their health or their education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and suited to their level of development and comply with national labour laws. Children's work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.

Article 33 (Drug abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and punishment): No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 38 (War and armed conflicts): Governments must do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces. The Convention's Optional Protocol on the involvement of children in armed conflict further develops this right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under 18.

Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40 (Juvenile justice): Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 41 (Respect for superior national standards): If the laws of a country provide better protection of children's rights than the articles in this Convention, those laws should apply.

Article 42 (Knowledge of rights): Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too. (See also article 4.)

Articles 43-54 (implementation measures): These articles discuss how governments and international organizations like UNICEF should work to ensure children are protected in their rights.

APPENDIX C: EUROPEAN NETWORK OF OMBUDSMAN FOR CHILDREN

Membership of ENOC is open to offices within Council of Europe member-countries which meet one of the following criteria:

1. National or regional offices set up through legislation specifically to promote children's rights and interests;
2. National human rights institutions set up through legislation which include a specific focus on children.

Aims

Inevitably and correctly, the aims and priorities of independent offices for children will vary from state to state. They will vary according to differences in the situation of children and according to the variety of governmental and non-governmental institutions and structures affecting children and promoting human rights within states.

The following is a summary of aims of existing independent offices; not all offices pursue all these aims (in particular, offices vary according to whether or not they deal with individual cases and complaints from children):

- to promote full implementation of the Convention on the Rights of the Child;
- to promote a higher priority for children, in central, regional or local government and in civil society, and to improve public attitudes to children;
- to influence law, policy and practice, both by responding to governmental and other proposals and by actively proposing changes;
- to promote effective co-ordination of government for children at all levels;
- to promote effective use of resources for children;
- to provide a channel for children's views, and to encourage government and the public to give proper respect to children's views;
- to collect and publish data on the situation of children and/or encourage the government to collect and publish adequate data;
- to promote awareness of the human rights of children among children and adults;
- to conduct investigations and undertake or encourage research;
- to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems, for example in institutions and schools, and including children's access to the courts;
- to respond to individual complaints from children or those representing children, and where appropriate to initiate or support legal action on behalf of children.

Factors for effective operation

All independent offices for children share some of the above aims, and so it is possible to identify some common factors likely to make them effective:

The United Nations Handbook on National Human Rights Institutions suggests the following "effectiveness factors":

- independence;
- defined jurisdiction and adequate powers;
- accessibility;
- co-operation;
- operational efficiency;
- accountability.

The "Paris Principles" on the status of national human rights institutions provide a basic framework for the establishment of an independent office to promote children's human rights. Offices should have:

- the competence to promote and protect human rights;
- as broad a mandate as possible, set forth in a constitutional or legislative text, specifying the institution's composition and sphere of competence;
- responsibilities to provide to parliament, government and other competent bodies opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights - either on request or through the office's power to consider matters without any higher referral;
- the right to publish opinions and reports independently, including commenting on the current state of the law and developments affecting human rights and any violations;
- general duties and necessary powers to enable the institution:
- to promote and ensure harmonization of national legislation, regulations and practice with the international human rights instruments to which the state is a party, and their effective implementation;
- encouraging ratification or accession to these instruments;
- to contribute to the reports which states are required to submit to UN bodies and committees and to regional institutions, and where necessary to express an opinion on the subject, "with due respect for their independence";
- to co-operate with UN and UN-related organizations and regional and national human rights institutions;
- to help formulate programmes for teaching and researching human rights and take part in them in schools, universities and among professionals;
- to publicize human rights and efforts to combat discrimination, by increasing public awareness - particularly through information and education and use of the media.

Methods of operation must include rights to:

- freely consider any questions falling within the institution's competence
- hear any person and obtain any information and documents necessary to assess situations falling within the institution's competence;
- speak out freely through the media.

The Principles propose particular guarantees of independence:

- powers to enable effective co-operation to be established with (or in the case of a Commission with members, through the presence of) representatives of relevant NGOs, trade unions, concerned social and professional organizations (for example associations of lawyers, doctors, journalists and eminent scientists); trends in philosophical or religious thought; universities and qualified experts; Parliament; government departments (but if they are included, they should participate in deliberations only in an advisory capacity);
- adequate funding to enable the institution to have its own staff and premises, in order to be independent of Government "and not subject to financial control which might affect its independence";
- appointment of members of the institution by an official act specifying the duration of their mandate.
(There are additional principles for institutions which are empowered to hear and consider individual complaints and petitions).

Independence

The definition of these offices is that they are independent of government. But the concept of independence is inevitably relative not absolute. Parliament or government generally provides most funding and there must be accountability. And to be influential, these offices need to have a close but not a dependent relationship with government.

A detailed section in the UN Handbook on National Human Rights Institutions discusses key components of independence. The following section is drawn from the Handbook and from the experiences of developing independent offices for children:

- **establishment by legislation:** many, but not all, independent offices for children have been established through an act of parliament, setting out their function and duties, status, powers, methods of appointment and so on. Defining the aims of an office in relation to the Convention on the Rights of the Child provides it with the authority of international law, and accentuates independence.

The Handbook suggests: "Ideally a national institution will be granted separate and distinct legal personality of a nature which will permit it to exercise independent decision-making power. Independent legal status should be of a level sufficient to permit an institution to perform its functions without interference or obstruction from any branch of government or any public or private entity. This may be achieved by making the institution directly answerable to parliament or to the head of state";

- **operational autonomy:** offices must be able to set and pursue their own agenda, and conduct their own affairs independently of any other individual, organization, department or authority. While such offices need to be consulted by government, and are likely to be asked to do particular projects for government, government should not be able to dictate the office's agenda, or overcrowd it to prevent it developing its own priorities and being able to respond quickly to new situations.

Similarly, reports and recommendations from an office should not normally be subject to review or change by any other body.

- **method of appointment and dismissal of key staff:** the process should be transparent, as far as possible independent of government, preferably by a representative body such as parliament and it should involve independent bodies including NGOs concerned with the human rights of children. "Any institution can only ever be as independent as the individuals of which it is composed. The granting of legal, technical and even financial autonomy to a national institution will be insufficient in the absence of specific measures to ensure that its members are, individually and collectively, capable of generating and sustaining independence of action" (Handbook, page 11).


The following appointment issues need to be addressed, preferably in legislation:

- process of appointment;
 - criteria for appointment (nationality, profession, qualifications, etc.);
 - duration for appointment, and whether key staff may be re-appointed (normally a fixed-term appointment, not too short, with the possibility of an additional term);
 - who may dismiss key staff and for what reasons (power to dismiss should only be vested in Parliament or at an equivalently high level, and only for very serious reasons);
 - privileges and immunities (for example, immunity from prosecution when performing official duties).
- **financial autonomy:** the office needs to be financially capable of performing its functions, and as far as possible finance of the office should be removed from political control, and



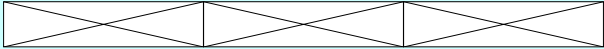
be guaranteed for a reasonable period. For financial issues, the office should be accountable not to government but to parliament. The Office should also be free to raise additional funds from non-government sources;

APPENDIX D: MANITOBA WEBSITE



TM

Youth 12 - 18




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[What's New](#)

Are you a Youth 12-18 years old?

We will do our best to help you, we will:

- Listen.
- Give you information about how you can solve your own situation.
- Help you say what you want to say.
- Call someone for you and explain what you want or need.
- Assist you in participating in decisions that affect your life.



We also may:

- Arrange a meeting with all the people involved and try to sort things out.
- Work to change the system for all children and youth having the same problem.
- Work with the community to promote and support advocacy for all children and youth.

What the Children's Advocate Cannot Do

An advocate cannot promise that you will get what you want, but

we can help to make sure you are heard and taken seriously. We cannot make decisions about your life or tell your social worker, foster parent or parents what to do. We can try to help you find a solution.

What Happens When you Call

You are your own best advocate, when you call you will be asked:

- What do you need help with?
- What have you tried so far?
- How do you want us to help?

You may be nervous or afraid to call us, but each year hundreds of people call us asking for help. No one has to know you called. If you need help calling us ask someone you trust to call for you. If you are in a foster home, group home or placed outside your home by a child and family service agency you have the right to contact the Office of the Children's Advocate.

Always remember that when a decision is being made about you, you have a right to say what you think, be listened to and be a part of making that decision.

If you don't agree with a decision, or feel that your views weren't taken seriously you have a right to be heard. You also have the right to have someone you trust help you say what you need to say.

Office of the Children's Advocate
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