

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

SUBMISSION TO THE STANDING COMMITTEE  
ON SOCIAL POLICY RE: BILL 179

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“AN ACT TO AMEND THE CHILD AND FAMILY SERVICES ACT RESPECTING  
ADOPTION AND THE PROVISION OF CARE AND MAINTENANCE”

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## **Submission to the Standing Committee on Social Policy**

### **Re: Bill 179 “An Act to Amend the Child and Family Services Act respecting adoption and the provision of care and maintenance”**

I would like to thank the Standing Committee on Social Policy for the opportunity to comment on Bill 179, Re: Bill 179 An Act to Amend the Child and Family Services Act respecting adoption and the provision of care and maintenance.

As you are aware, the Office of the Provincial Advocate for Children and Youth is an independent office of the Legislature of Ontario and is responsible for providing an independent voice for children and youth, including First Nations children and youth and children with special needs. Under the Provincial Advocate for Children and Youth Act, 2007, the Provincial Advocate has the authority and mandate to provide advocacy services to children and youth within state care or the margins of state care. These youth include:

- Children and youth involved with the Youth Criminal Justice System
- Children and youth seeking or receiving services from the Child Welfare System
- Children and youth receiving services from the Mental Health System
- Children and youth at Provincial and Demonstration schools
- Children and youth from First Nations communities
- Children and youth with special needs

I think it is also important for people to know that I am required by law to interpret and apply the legislation that created my Office using two specific and very important principles:

1. The Principles expressed in the United Nations Convention on the Rights of the Child;  
and
2. As an exemplar for meaningful participation of children and youth.

Currently, “on any given day, there are approximately 17,000 children in care and 50 percent of these children are permanent wards of the Crown.” (OACAS, 2011, p. 22) These children are truly the province’s children. The obligation to parent these children does not rest with one Ministry (such as the Ministry of Children and Youth Services) but with the entire government.

For the past year, I have been travelling throughout the province and meeting with over a thousand young people who are currently in what is often called the “care system” or simply “in care”, as well as young people who were formerly “in care”. On March 15, 2011, I had an event at my office for young people from across Ontario to discuss ideas about improving outcomes for children in care. Of course they had many good ideas.

I have also been meeting with Ministers, Deputy Ministers, government officials, agency representatives, Directors of Associations, leaders of Faith Based Organizations, leaders in the private sector, those who I have come to call both “expected” and “unexpected” allies. I have spoken to them about the understanding of Crown Wards as the Provinces’ children and the fact that these children do not fare well after they leave the Provinces’ care. I have talked about what might work to create better outcomes; the provision of practical resources,

permanent positive connections and the development of a sense of personal control. I have asked each of them to think about how they might improve the outcomes for young people in care and to ask themselves the following question when devising or carrying out any decision, policy or program that falls within their purview: “How will this affect my children?” This is the way I think about these children, and the way I would like you to think about these children. Your children. The Province's children. The children to whom the Legislature owes a special obligation.

The proposed amendments, debates and hearings represent an opportunity to enhance the current legislation regarding adoption and the concept of permanency.

Bill 179 is the beginning of a necessary dialogue for addressing the issues related to permanency, family and connection in child welfare. When reflecting upon Bill 179 the image that comes to mind is that of the Ministry as a child, just learning to swim, on the edge of the swimming pool set to jump in -testing the water with their toe. Dipping it in to test the temperature or just simply out of fear. Bill 179 is testing the water of a larger and deeper dialogue that needs to take place. This dialogue would ensure the positive connections and permanent familial relationship. I encourage the Ministry to have the confidence to dive in and make the splash that will create the lasting and sustainable change for children and youth in the care of Children’s Aid Societies.

In making these written submissions to the Standing Committee on Social Policy, I will draw attention to some gaps and areas that have been overlooked in the proposed amendments.

## Permanency and Family

Bill 179 sets the stage for building permanent families for the provinces children. Permanency to youth in care is a crucial yet complicated concept. It means different things to different people. The concept of “family” is not synonymous with “permanency” and certainly the concept of family is equally complicated for young people in care.

The systems that serve our children, that we ask to parent our children, often work against this type of connection. This is not to say that the people working in the systems are unfeeling. To the contrary, for most, the building of reciprocal relationships with those they serve is the why they went to school in the first place.

In child welfare in Ontario, youth are required to leave their foster homes by the age of 18 years. They live on their own at age 18 years, ready or not, with limited support from the system until the age of 21 years, and then that is it.

Despite the system’s best efforts children and youth continue to move from worker to worker. They move from placement to placement. With each move, or as one youth put it “migration”, they may change schools, groups of friends, and certainly, families. This is hardly a system designed to encourage the establishment of long term, permanent connections.

Outside child welfare, in the realm of children’s mental health, fragmentation of services and services that are time limited due to funding requirements can mean relationships are extremely difficult to forge and maintain.

When it comes to the concept of connection, youth have said two other things to me that have stuck. They have said, “You can choose your friends and you can choose your family”. The concept of family includes, for many of them, friends, social workers, foster parents, teachers, employers, aunts, and uncles, brothers and sister, etc. In some ways, they have understood family to be as socially constructed concept, which allowed them to create and choose their own. With this understanding, supporting the creation of family becomes crucial to the services we offer children and youth.

Adoption is one way of creating family and may be the answer for some, but is not the only solution to the issues of permanency for crown wards. This was acknowledged by The Minister in her public announcement of Bill 179.

The proposed amendments relating to adoption are a beginning step to address some of the issues outlined in the report, Raising Expectations: Recommendations of the Expert Panel on Fertility and Adoption commissioned by the Government of Ontario in 2009. Unfortunately, very few of the recommendations relating to adoption from that report were implemented although the spirit of the report is certainly present.

In announcing the Bill the Ministry has not set targets for how many more permanent families through adoption that they hope the changes to the Child and Family Services Act (CFSA) will create. This is unfortunate. It is indicative of a larger challenge for the Ministry in identifying the expected outcomes for Crown Wards once they are on their own and any measure if those outcomes are achieved.

## **Openness Orders**

Currently, under the CFSA, the consent of a child aged 7 or more is required to complete an adoption and the child is required to have an opportunity to obtain counselling and independent legal advice with respect to the consent. I believe that children and youth should receive the same protection under the proposed amendments relating to “openness orders”. These amendments should include a guarantee that children and youth receive independent legal advice and also the opportunity to have meaningful participation in the decisions and creation of an openness order.

## **Extended Care and Maintenance**

When Bill 179 was announced I was pleased to hear that 16 and 17 year old Crown Wards who had left care would now be able to return to care if they wished. This was an important change to the CFSA. It was the Province saying to youth who had ventured out on their own, “You can come home again. We are there for you if you need us”. It was a way of creating permanency.

ECM, as stated earlier, is a service that may be offered to crown wards as they age out of foster care and group care at 18, until they are 21. ECM consists of monthly stipend to pay for rent, food, transportation, bills and other daily living costs. The former crown ward must sign a contract that specifies agreed upon goals with the society. In most cases the youth must be attending school, working part-time or a training program.

As noted by the Minister when she introduced the proposed amendments, more than half of Canadians live at home well into their 20’s. Other reports indicate that the average age for independent living among the general population in Canada is 27 years of age. Thus, the first of

the proposed amendments, described in public statements as a mechanism to allow children who left care prior to their 18<sup>th</sup> birthday to return to a Children's Aid Society and become eligible to receive benefits until their 21<sup>st</sup> birthday was greeted not only with elation but as a signal that the government was serious about improving outcomes for Crown Wards.

Unfortunately, the promise made in the public statements has not been reflected in the proposed amendments. Currently the CFSA does not allow a young person who has left the care of a Children's Aid Society at 16 or 17, to later recognise this was not the right decision and reverse it and return for support. Bill 179 proposes to amend section 71.1 of the Child and Family Services Act (CFSA) by adding the following clause:

*“A society or agency may provide care and maintenance in accordance with the regulations to a person who is 18 years of age or more if, immediately before the person's 18th birthday, the person was receiving support services prescribed by the regulations”.*

There is nothing in the proposed legislation that actually states that 16 or 17 year olds who leave care and wish to return before their 18<sup>th</sup> birthday's are entitled or eligible for support. Nor does the legislation direct a CAS to provide services to youth who wish to return on a voluntary basis. This opens the door to inconsistencies across the province regarding who gets services and who does not. My Office sought clarification on this issue from the Ministry of Children and Youth Services and it has been confirmed that the new changes will leave the decision to offer services within the discretion of each individual CAS through a non directive

policy rather than legislative change. Without clear legislation and directives to CAS's, the youth who may require support the most may in fact be the ones who are not getting it at all.

### **Ontario Student Assistance Program**

The debates and public announcements about Bill 179 make reference to what would be a particularly beneficial outcome of the proposed legislation- that financial support given by a Children's Aid Society to a young person attending a college or university would be exempt from the Ontario Student Assistance Program (OSAP) assessment. Of course I support this decision, but fail to see where it is mentioned in the proposed legislative amendments.

Recently I made a similar suggestion to that which is being proposed here when I appeared before the Standing Committee to present a submission on Bill 140: Strong Communities through Affordable Housing Act, 2011. I requested that CAS allowances such as Extended Care and Maintenance be exempt from consideration of income for rent geared to income housing. I was not successful in persuading all of the members of the standing committee of the value of this recommendation but I would like to thank those members who supported this proposal and recommended it for inclusion into the Bill. It would be of great value if this committee would adopt a crown ward lens when reviewing any piece of legislation that comes before it with an eye to exempting crown wards and former crown ward from paying user fees, application fees or any other fees associated with government services.

Bill 179: An Act to Amend the Child and Family Services Act respecting adoption and the provision of care and maintenance, in its current form, while a "toe in the water", lacks substance and enough impact to make meaningful changes in the lives of the provinces children

and youth. I encourage the province to be courageous enough to dive into the Child and Family Services Act and make a real splash. Here is what can be done with a few more strokes of the pen that could make a significant impact in the lives of your children:

### **Recommendations**

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

average age for independent living among the general population in Canada is 27 years of age.

3. Extended Care and Maintenance age limit should be increased and funded from age 21 to 25 across the province. Many youth who qualify for ECM because they are in school programs are faced with the devastating reality of losing all support systems in their lives, financial and emotional, at a time when they are trying to create a stable future for themselves. Additionally, many youth in care do not begin to address their “coming into care” issues until they become adults. If they do not have the support of the agencies that raised them, their futures could be affected exponentially. At age 25, many youth may have completed a post secondary program and/or be possess a level of maturity that will be beneficial as they move forward in their lives.
4. Financial incentives for families who are willing to adopt children and youth with special needs and/or older teens, rather than keeping them in public care. The Raising Expectations report recommends the use of needs based criteria for subsidies ranging from 50% to 80% of the current foster rate. It is estimated that it costs \$32,000. 00 to keep a child in foster care or group care. (Expert Panel on Infertility and Adoption, 2009, pp 4, 9)
5. Consistent with the recommendation from the Raising Expectations report, the province should create a Provincial Adoption Agency to work parallel to children’s aid societies to coordinate adoption in the Province. The primary role of CASs is protection services and as such, other services get lost amongst the competing priorities. The creation of an adoption information website and increasing the number of Adoption Resource

Exchanges, as mentioned in the public announcement of Bill 179 lead to this centralization of some adoption services.

6. Revise the proposed amendment for section 71.1 to say explicitly: “youth aged 16 and 17 who have left CAS care or customary care may return for services up until their 18<sup>th</sup> birthday and therefore be eligible for Extended Care and Maintenance”.
  
7. Revise the proposed amendments regarding an openness order to include: “An openness order for a person who is seven years of age or more shall not be made without the person’s written consent; and consent shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.”

## References

Ontario Association of Children's Aid Societies Annual Report. (2011). *Children's Well-Being: The Ontarian Perspective* child welfare report 2011. Toronto: Ontario Association of Children's Aid Societies

Expert Panel on Fertility and Adoption, (2009) *Raising Expectations: Recommendations of the Expert Panel on Fertility and Adoption*. Toronto