

Provincial Advocate
for Children & Youth

L'intervenant provincial
en faveur des enfants & des jeunes

Office of the Provincial Advocate
for Children and Youth

Submission to
Standing Committee on General Government on
Bill 8: Public Sector and MPP Accountability and Transparency
Act, 2014

November 26, 2014

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OVERVIEW

The Members of this Legislature have demonstrated a strong commitment to protecting the best interests of the most vulnerable children and youth in Ontario. This is apparent not only through the establishment of the Office of the Provincial Advocate for Children and Youth (“Advocate’s Office”) as an independent Office of the Legislature, but also through the tremendous support from all parties for the Youth Leaving Care Hearings (which took place at Ontario’s Legislative Assembly in November of 2011), and the passage of *Children and Youth in Care Day Act, 2014*.

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

The Provincial Advocate welcomes the new grant of investigative powers proposed under Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*. Bill 8 will enhance the effectiveness of the Advocate’s Office and its ability to hold institutions to account, by granting the Advocate investigative powers in one aspect of his mandate—with respect to a children’s aid society service, or a service provided by a residential licensee where a children’s aid society is the placing agency.¹ The Advocate’s Office will be the first independent external body able to effectively and quickly investigate children’s aid society and residential licensee conduct in cases where, for example, children are hurt or in danger. However, the Bill in its present form has a number of statutory deficits that must be remedied in order to assure Members of this Legislature that the most vulnerable children and youth in Ontario are being supported and protected from harm. The Provincial Advocate therefore suggests amendments to Bill 8 to provide enhanced safeguards comparable to those offered in other Canadian provinces, and consistent with the powers of other independent Officers of the Legislature in Ontario.² If approved, these amendments will:

- Enhance accountability by enabling the Advocate’s Office to obtain information in the course of its duties, specifically when it reviews complaints or conducts reviews under the Act
- Investigate complaints from vulnerable children and youth in all areas of the Advocate’s mandate
- Provide whistleblower protection for service providers who make reports to the Provincial Advocate
- Enable the Provincial Advocate to communicate Coroner’s recommendations where such information is already publicly available

1 Annex 10, s. 7, amending section 15 of the Act

2 The Provincial Advocates’ recommendations are set out in Appendix "A"

It is important for Members to realize that the Bill 8 Schedule 10 amendments, in their current form, will result in a Provincial Advocate who continues to lack the authority and protections afforded to the other six independent Officers of this Legislature, even though as a general rule, the status, rights and privileges of legislative officers ought to be equal. No officer should be more, or less, independent, effective or accountable than another. Several provisions of Bill 8 undermine the effectiveness and independence of the Provincial Advocate. This submission makes recommendations about the term of reappointment, the structure and staffing of his office, and the right to obtain information. As it now stands, Bill 8 will provide the ability to obtain information with respect to a limited portion of the statutory mandate—where children receive services from a children's aid society or residential licensees following a children's aid society placement. However, the Provincial Advocate will not have the authority to require governments, institutions and agencies to produce information in respect of the **remainder** of his mandate, including reviews, in areas where investigative powers have not been granted under Bill 8. The Provincial Advocate is the only Officer of the Legislature lacking this power. Moreover, the Provincial Advocate of Ontario is the only child and youth advocate in Canada who lacks this power.

Next, the Provincial Advocate has concerns with the narrow scope of investigation powers proposed in Bill 8, and recommends eliminating the prohibitions on investigations relating to the services offered by children's aid societies and residential licensees. He also recommends extending the Bill 8 investigation powers to other vulnerable children within his mandate.

The Provincial Advocate seeks two further statutory amendments. One, that would permit him to publish identifying information where the information has already been made public through a Coroner's inquest or court proceeding. This will assist in advocacy for the protection of children and youth.

Finally, the Provincial Advocate requests this Legislature to enact legislation extending whistleblower protection to employees who are not covered by the existing whistleblower provisions contained in the *Public Service of Ontario Act, 2006*, in cases where disclosure is made to the Provincial Advocate, or his authorized designate, regarding a risk of harm to children or youth.

The Provincial Advocate welcomes the opportunity to present these recommendations to the Committee.

SUMMARY OF RECOMMENDATIONS

Recommendation 1

Term of Reappointment: That Schedule 10, section 4 of the Act which would amend subsection 6(1) of the Act NOT be approved, so that the current term of reappointment remain as an additional term of five years.

Recommendation 2

Structure and Staffing of Office: That section 5 of Schedule 10, which implements directions about the structure of the Advocate's Office by adding s. 13.1, NOT be approved.

Recommendation 2 Alternate, in the event Recommendation 2 is not accepted

Staff Investigative Team: That the requirement in section 13.1(2) that the investigative team include individuals with "significant experience in investigations and child protection..." should be amended to read "significant experience in investigative practice and/or analytical thinking, typically acquired in fields such as law, policing, child protection, pediatric health, forensics, public health, academia and research."

Recommendation 3

Information Sharing within the Office: That Section 13.1(4) NOT be approved, and the provisions restricting sharing of information be replaced with the following provisions adapted from the regulation governing the Ombudsman:

The Provincial Advocate and his or her staff shall not, except where permitted by the Act in carrying out functions thereunder, disclose to any third party any information received by the Provincial Advocate or his or her staff while carrying out any of the functions of the Provincial Advocate under the Act.

A member of the Provincial Advocate's staff carrying out the Advocate's functions under the Act, shall not express to anyone, other than to the Provincial Advocate or to his or her authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization or institution in question or respecting anything else arising out of the investigation of the complaint by the Provincial Advocate and his or her staff.

Recommendation 4

Right to Obtain Information: The Provincial Advocate may from time to time require any officer, employee or member of any governmental organization, public sector body or service provider, who in his or her opinion is able to give any information relating to any matter that the Provincial Advocate believes to be necessary to perform his or her duties under this Act, to furnish to him or her any such information, and to produce any documents or things which in the Provincial Advocate's opinion relate to any such matter and which may be in the possession or under the control of that person.

Recommendation 5

Powers Paramount: The powers conferred on the Provincial Advocate by this Act may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question.

Recommendation 6

Proceedings not to be questioned or subject to review: No proceeding of the Provincial Advocate shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Provincial Advocate is liable to be challenged, reviewed, quashed or called in question in any court.

Recommendation 7.1

Proceedings to be Privileged: No proceedings lie against the Provincial Advocate, or against any person holding any office or appointment under the Provincial Advocate, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

Recommendation 7.2

Provincial Advocate not to be called to give evidence: The Provincial Advocate, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.

Recommendation 7.3

Information/documents treated as privileged: Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Provincial Advocate under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Recommendation 8:

Power of entry of premises: For the purposes of this Act, the Provincial Advocate may at any time enter upon any premises occupied by any governmental organization, public sector body or service provider and inspect the premises and carry out therein any investigation within his or her jurisdiction.

Recommendation 9

Prohibitions Limiting Investigative Powers: That prohibited matters under sections 16.4(a)1. to 4. and 6. be DELETED from Bill 8.

Recommendation 10

Extending Investigative Powers: Other Vulnerable Children: That Bill 8 be amended by granting the Provincial Advocate powers of investigation regarding children seeking or receiving services in all areas of the Advocate's mandate, including children's mental health, youth justice, developmental services, and the provincial and demonstration schools for the deaf, blind, deaf-blind and severely learning disabled and children and youth with special needs.

Recommendation 11

Young People Receiving Services: That the Provincial Advocate be permitted to investigate the concerns of young people receiving services from an agency funded by the Ministry of Children and Youth Services up to the day of their 25th birthday.

Recommendation 12

Unlicensed Residential Placements: That the Provincial Advocate be permitted to investigate the concerns of young people placed in an unlicensed residential setting

Recommendation 13

Publication of Identifying Information: That the Act be amended to provide that despite section 20, paragraph 10, or any other Act, the Advocate may disclose in a public report or a public communication a name or identifying information of a deceased child or youth if, at the time of such disclosure, that information has been made public through inquest or court proceedings.

Recommendation 14

Whistle-Blowing: The Provincial Advocate requests this Legislature to enact legislation extending whistleblower protection to those employees not covered by the *Public Service of Ontario Act, 2006*, where a disclosure is made to the Office of the Provincial Advocate for Children and Youth involving a risk of harm to children and youth within its mandate.

BACKGROUND: THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

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

In addition, under section 15 of the Act he is mandated to provide advocacy for those seeking or receiving services under the *Child and Family Services Act*,³ promoting rights under Part V of the CFSA; advocacy for pupils attending the provincial and demonstration schools for the deaf, blind, deaf-blind and severely learning disabled; and for those young persons held in court holding cells.

Under section 16 of the Act, the Advocate's powers include receiving and responding to complaints, conducting reviews, representing the views of children and youth to service providers, informally resolving complaints, making reports, providing advice, educating and providing advocacy. Advocacy does not include conducting investigations or providing legal advice or legal representation to children and youth.⁴

Bill 8 will expand the powers of the Provincial Advocate to provide him with the ability to conduct investigations, including systemic investigations, into only one aspect of his mandate — concerning a child or group of children in respect of a children's aid society service, or services provided by a residential licensee where a children's aid society is the placing agency.

INDEPENDENT OFFICER OF THE LEGISLATURE

The Provincial Advocate is one of seven independent Officers of the Ontario Legislature. The Provincial Advocate's proposed powers of investigation, combined with current powers of review and advocacy provide an assurance to the Members of this Legislature that there will be accountability and protection for Ontario's most vulnerable children and youth.

Despite the amendments in Bill 8, the Provincial Advocate will lack authority and protections afforded to the other six independent Officers. The Provincial Advocate is of the view that as a general rule, the status, rights and privileges of legislative officers ought to be equal. No officer should be more or less independent than another or more or less accountable than another. With this in mind, several provisions bearing on the effectiveness and independence of the Provincial Advocate are undermined by Bill 8, including proposed changes to the Advocate's term of reappointment, the structure of the Office, and continued restrictions on the legal authority to obtain relevant information. A summary of legislation for the six other independent Officers of the Legislature can be found in Appendix "B", and includes: provisions on the term of office, structure of the office, and their ability to obtain information on matters relevant to their mandates, for comparison.

³ R.S.O. 1990, c. C.11 (the "CFSA").

⁴ Section 2(1) of the Act, definition of "advocacy".

TERM OF OFFICE

Bill 8 proposes a change to the terms of Office of the Provincial Advocate that undermines the independence of the Office. The Act presently provides that the Advocate holds office for a term of five years, and may be reappointed for one further term of five years (section 6(1)). Bill 8 would amend this to reappointment for a further term of “up to five years” (Schedule 10, section 4). None of the other independent Officers are subject to an indeterminate term of reappointment. Indeterminate appointments undermine independence, as it is important that the Provincial Advocate have security of tenure in order to discharge his statutory mandate.

RECOMMENDATION 1

TERM OF REAPPOINTMENT: That Schedule 10, section 4 of the Act which would amend subsection 6(1) of the Act NOT be approved, so that the current term of reappointment remain as an additional term of five years.

STRUCTURE OF OFFICE

Bill 8 interferes with the independence of the Provincial Advocate by specifically directing the qualifications of the investigative team, and the method of operations of the investigative team. It also restricts sharing of information within the Office of the Provincial Advocate for Children and Youth. In contrast, the other independent Officers are all empowered to employ staff as they consider necessary for the efficient operation of their offices,⁵ and none are subject to statutory limitations on the structure of their office. The Bill 8 amendments would unduly interfere with the Provincial Advocate’s discretion and ability to staff and deploy staff in the most efficient manner to best meet his mandate. It will interfere with the optimal use of resources and interfere with the search for efficiencies in office staffing and structure. As a result, the Provincial Advocate recommends that these provisions NOT be implemented.

RECOMMENDATION 2

STRUCTURE AND STAFFING OF OFFICE: Section 5 of Schedule 10, which implements directions about the structure of the Advocates’ Office by adding s. 13.1, NOT be approved.

In the event that the Legislative Assembly believes that the Provincial Advocate should be provided with some direction about the qualifications of his or her employees, alternative language is suggested. As currently written, there is an undue focus on hiring candidates with a background in child protection. Yet a previous history of working at a children’s aid society is just one of a wide range of work experiences that might prepare a qualified individual to conduct investigations into harm to vulnerable children. The present requirement in section 13.1(2) that the investigative team include individuals with “significant experience in investigations and child protection...” should be amended to read “significant experience in investigative practice and/or or analytical thinking, typically acquired in fields such as law, policing, child protection, paediatric health, forensics, public health, academia or research.”

⁵ See Appendix "B"

RECOMMENDATION 2 Alternate, in the event Recommendation 2 is not accepted
STAFF INVESTIGATIVE TEAM: That the requirement in section 13.1(2) that the investigative team include individuals with “significant experience in investigations and child protection...” should be amended to read “significant experience in investigative practice and/or analytical thinking, typically acquired in fields such as law, policing, child protection, pediatric health, forensics, public health, academia and research.”

Further, proposed amendments prohibiting the sharing of information among the Provincial Advocate’s staff contained in section 13.1(4) of the Act should be removed, and replaced with an amendment similar to the provision under the regulations applicable to the Ombudsman,⁶ which prohibits the disclosing of information to a third party and also prohibits an investigator from sharing his or her opinion about recommendations, or acts or omissions purportedly committed by the entity under investigation with anyone but the Provincial Advocate or his delegates.

RECOMMENDATION 3

INFORMATION SHARING WITHIN THE OFFICE: That Section 13.1(4) NOT be approved, and the provisions restricting sharing of information be replaced with the following provisions adapted from the regulation governing the Ombudsman:

The Provincial Advocate and his or her staff shall not, except where permitted by the Act in carrying out functions thereunder, disclose to any third party any information received by the Provincial Advocate or his or her staff while carrying out any of the functions of the Provincial Advocate under the Act.

A member of the Provincial Advocate's staff carrying out the Advocate’s functions under the Act, shall not express to anyone, other than to the Provincial Advocate or to his or her authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization or institution in question or respecting anything else arising out of the investigation of the complaint by the Provincial Advocate and his staff.

⁶ R.R.O. 1990, Reg. 865, ss. 2-3

RIGHT TO OBTAIN INFORMATION

Bill 8 is an important step in the right direction in granting the Provincial Advocate the ability to compel information necessary to conduct investigations into a portion of his mandate as discussed below.

However, the Provincial Advocate will not have the authority to require governments, institutions and agencies to produce information in respect of the **remainder** of his mandate, including reviews, in areas where investigative powers have not been granted under Bill 8. Vulnerable young people who are precluded from asking the Provincial Advocate to conduct an investigation into their concerns include: young people in youth justice facilities, homes for children and youth with special needs, or unlicensed facilities, those receiving services from children's mental health centres, and pupils of the residential provincial and demonstration schools for the deaf, deaf-blind and severely learning disabled. The Provincial Advocate is the only Officer of the Legislature lacking this power. Moreover, the Provincial Advocate is the only child advocate in Canada lacking the power to compel information.

To illustrate the gravity of the situation, we have provided the below examples that show the vulnerability of young people in the children's services system and why investigative powers are so important in these situations:

“PATRICK”⁷

1 A 10 year-old boy complained of frequent use of restraints at his group home. Preliminary information obtained by the Advocate's Office indicated he had been subject to 108 physical restraints by staff over a 13-month period. Although physical restraints must be documented in “Serious Occurrence Reports” and filed with both the Ministry of Children and Youth Services and the placing Children's Aid Society, this high number of restraints did not generate any concern at either the ministry level or the Children's Aid Society and appears to have gone unnoticed until it was brought to the attention of both by the Advocate's Office. An analysis by the Advocate's Office revealed that in more than half of the incidents, staff used a physical restraint on a young person even though there was no documentation that the young person posed an imminent risk of harm to himself or anyone else. No one had noticed that the agency had been using physical restraints without legal justification until the Advocate's Office became involved.

“TAE0”

2 On December 17, 2013 the *Globe and Mail* reported that a man had been sentenced to a 20-year prison term for the assault of a 12 year-old autistic boy that took place at children's mental health facility. The Provincial Advocate became aware of this situation through media reports when the perpetrator, a staff member of the facility at the time of the assault, was arrested. The ministry took the position it was unable to provide information to the Advocate's Office about the specifics of the event or the investigation. As a result, the Provincial Advocate is seeking court transcripts to obtain more information about the incident and will pursue Freedom of Information Requests to inquire about any action taken by the ministry to prevent similar incidents in future.

⁷ While the examples used reflect actual case work and calls received by the Office of the Provincial Advocate for Children and Youth, all names are fictional to protect the identity of children and youth.

“KEENAN”

3 Recently, the Toronto Star reported that the young boy who had been found dead in a car was a recently adopted foster child. The Office of the Chief Coroner and the placing Children’s Aid Society have declined to provide a briefing about the death or the status of the investigation to the Provincial Advocate. As a result, the Provincial Advocate has as much information about the death of a child in his mandate as an ordinary member of the public and much less information than the media reporters assigned to cover these tragic deaths.

“TYLER” & other cases

4 The Ministry of Children and Youth Services continues to refuse to provide the Provincial Advocate with investigation reports that could provide assurances that the ministry has undertaken a thorough investigation in response to allegations from young people that they have been assaulted by staff in youth justice facilities.

“WALEED”

5 A 14 year-old boy called the Advocate’s Office because the Children’s Aid Society intended to terminate a Temporary Care Agreement and return him to his mother’s legal custody (albeit he would initially be living with a relative and not his mother). The young person alleged his mother was abusive and raised concerns about the living conditions in his relative’s home. He proposed that he not be moved until his concerns about the living conditions were addressed. The Children’s Aid Society refused to provide the Advocate’s Office with either a copy of the home study investigation undertaken by the Society or a letter from the Children’s Aid Society attesting to their assessment that the home was safe. The young man was discharged from care within a day of his call, despite his concerns.

“SHARI”

6 An Advocate and a licensing officer employed by the Ministry of Children and Youth Services attended at a residence to follow up on the complaints of a young person. During this meeting the young person raised a number of concerns including a complaint that she had been required to clean up the bodily fluids of another young person after a crisis. The licensing officer declined to investigate these concerns and, instead, planned to ask the service provider to speak to the young person and follow up with her concerns.

Of equal concern was the licensing officer’s contention that the appropriate focus of Ministry attention was the “residence” (ie the group home) and not the “residents” (ie the young people).

The Provincial Advocate has the power, under section 16(1)(b) of the *Provincial Advocate for Children and Youth Act, 2007* to “conduct reviews, whether in response to a complaint or under the Advocate’s own initiative”. The statute defines a “review” as “gathering and assessing information for the purpose of advocacy” and defines a “systemic review” as:

“Providing advocacy to a group of children or youth who are in similar circumstances, either in response to a complaint or request by one child or youth, or on the Advocate’s own initiative and this includes the review of facilities, systems, agencies, service providers, and processes as permitted under this or any other Act”.

However, the Provincial Advocate has no authority to require production of information relevant to reviews or complaints, and his ability to discharge his function is greatly impeded by this limitation.

For example, the Provincial Advocate is unable to access necessary information from entities responsible for services to children under the CFSA due to the prohibitions on disclosing personal information under that legislation.⁸ The Provincial Advocate does not have the legal authority to compel information from a service provider beyond that which might be available to any member of the public through an access request under the *Freedom of Information and Protection of Privacy Act*.⁹ Given the provisions of *Municipal Freedom of Information and Protection of Privacy Act* and *Freedom Of Information and Protection of Privacy Act* on disclosure of personal and identifying information, the Provincial Advocate is unable to obtain necessary information from provincial and municipal governments, institutions and police services in order to properly carry out his functions.

Like any other citizen, the Provincial Advocate is put in the position of having to make a request under freedom of information legislation to a fellow independent Officer of the Legislature, the Information and Privacy Commissioner, to obtain information held by institutions subject to MFIPPA and FOIPPA. This is an inefficient and unfair restriction. It puts the Information and Privacy Commissioner in the inappropriate position of determining the access to information which a fellow Officer of the Legislature, the Provincial Advocate, would require in order to discharge his statutory mandate.

The other six independent Officers of the Ontario Legislature have the legal authority to require the production of documents relevant to all aspects of their mandate. A summary of the authority to obtain information afforded to the other independent Officers is contained in Appendix “B”. There is no justification for depriving the Provincial Advocate of the critical right to information, or rendering his access dependent on the actions of another Officer of the Legislature who may not fully understand his mandate. Accountability, efficiency, effectiveness and independence all require that the Provincial Advocate have the right to obtain information to

⁸ CFSA, ss. 45(8) and 85(3)

⁹ The right of the Provincial Advocate to this information is also consistent with international standards. The International Co-Ordinating Committee of the High Commission on Human Rights has developed a “checklist” of minimum standards for children’s human rights institutions (encompassing children’s ombudsman and children’s advocate offices). These include the right to obtain any information or documents necessary to carry out its work; that the right to obtain documents is enforceable by law; and denial of access to a document is punishable by law. See: Office of the High Commission on Human Rights, *National Human Rights Institutions* (New York and Geneva, United Nations, 2010) at p 53

discharge his mandate. As a matter of principle and practice, the independent Officers of the Legislature require a right of access to information they believe necessary to conduct proper audits, investigations, inquiries and reviews. This must be extended to the Provincial Advocate.

It should be noted that s119 (1) (l) of the *Youth Criminal Justice Act* recognizes an advocate's need for government information as it allows, "a coroner or a person acting as a child advocate... who is acting in the course of his or her duties under an Act of Parliament or the legislature of a province" to have access to youth court records upon request and be permitted access to police records or government records.

Further, **with the exception of Ontario**, all provincial and territorial child advocate offices have the legal authority to require governments and agencies to produce information at their request in every area of their mandate. An environmental scan of the right to obtain information by other Canadian provincial and territorial child advocates is attached as Appendix "C". The ability to require governments, service providers, institutions and public bodies to provide information is a critical component of the effective and independent discharge of the mandate of the Provincial Advocate. By granting these significant powers, the Legislature will enable the Provincial Advocate to better protect children and youth and to hold institutions to account.

RECOMMENDATION 4

RIGHT TO OBTAIN INFORMATION: The Provincial Advocate may from time to time require any officer, employee or member of any governmental organization, public sector body or service provider, who in his or her opinion is able to give any information relating to any matter that the Provincial Advocate believes to be necessary to perform his or her duties under this Act, to furnish to him or her any such information, and to produce any documents or things which in the Provincial Advocate's opinion relate to any such matter and which may be in the possession or under the control of that person.

OTHER MISSING POWERS

There are a number of other significant powers and protections applicable to the other independent Officers of the Legislature that are not provided to the Provincial Advocate in Bill 8. As part of the process leading to Bill 8, The Ministry of Children and Youth Services notified the Provincial Advocate that a decision had been made to enhance the powers of the Advocate's Office by replicating portions of the *Ombudsman Act*. The reason given for the decision was that the Ontario Ombudsman was seen by both the Ministry and the public to have substantial authority and the necessary power to conduct thorough investigations.

The Provincial Advocate takes the view that it is entirely appropriate to incorporate sections of the *Ombudsman Act* into the *Provincial Advocate for Children and Youth Act* and agrees that the powers of each office to conduct investigations, and the protections afforded in respect of those investigations, should be equal.

Unfortunately, not all of the powers of the Ontario Ombudsman were transferred into the proposed amendments. There are a number of powers missing. These are listed below in terms of the “sub-headings” that appear in the *Ombudsman Act*:¹⁰

- Section 14 (3), Powers paramount;
- Section 23, Proceedings not to be questioned or subject to review;
- Section 24 (1), Proceedings privileged;
- Section 24 (2), Idem (Ombudsman not to be called to give evidence)
- Section 24 (3), Idem (Information/documents treated as privileged)
- Section 25 (1)(2)(3)(4), Power of entry of premises

Of these, the right of entry to premises is particularly important. Advocates must have the ability to enter the environment in which a young person is living in order to conduct a thorough investigation into complaints about a particular residence or the young person’s care while at the residence. Failing to provide the Provincial Advocate with the authority to enter premises funded by the Ministry, either directly or through transfer payments to agencies, when the young person has raised a complaint about his or her care is akin to requiring police officers to investigate crimes without allowing them to attend the crime scene. It is an unreasonable limitation that is more likely to shield service providers from scrutiny than protect vulnerable children from harm.

RECOMMENDATION 5

POWERS PARAMOUNT: The powers conferred on the Provincial Advocate by this Act may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question.

RECOMMENDATION 6

PROCEEDINGS NOT TO BE QUESTIONED OR SUBJECT TO REVIEW: No proceeding of the Provincial Advocate shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Provincial Advocate is liable to be challenged, reviewed, quashed or called in question in any court.

RECOMMENDATION 7.1

PROCEEDINGS TO BE PRIVILEGED: No proceedings lie against the Provincial Advocate, or against any person holding any office or appointment under the Provincial Advocate, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

¹⁰ *Ombudsman Act*, RSO 1990, c. O.6. It should also be noted that the Ombudsman of Ontario has access to information (s19) and investigation powers (s14) that are applicable to *all* areas of his mandate.

RECOMMENDATION 7.2

PROVINCIAL ADVOCATE NOT TO BE CALLED TO GIVE EVIDENCE: The Provincial Advocate, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.

RECOMMENDATION 7.3

INFORMATION/DOCUMENTS TREATED AS PRIVILEGED: Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Provincial Advocate under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

RECOMMENDATION 8

POWER OF ENTRY OF PREMISES: For the purposes of this Act, the Provincial Advocate may at any time enter upon any premises occupied by any governmental organization, public sector body or service provider and inspect the premises and carry out therein any investigation within his or her jurisdiction.

BILL 8 INVESTIGATION POWERS

Bill 8 grants new powers of investigation to the Provincial Advocate, including powers of systemic investigation, with respect to a children's aid society service, or a service provided by a residential licensee where a children's aid society is the placing agency.¹¹ We welcome this change. The Provincial Advocate will be the first independent body able to effectively and quickly investigate children's aid society and residential licensee conduct in cases where, for example, children are hurt or in danger. However, the Provincial Advocate has recommendations to make these powers more effective.

STATUTORY PROHIBITIONS ARE TOO BROAD

The proposed Section 16.4 of the Act unnecessarily limits the matters the Provincial Advocate may investigate thereby undermining the effectiveness and accountability provided by the Provincial Advocate. These prohibitions should be amended to ensure that the new grant of powers properly allows the Provincial Advocate to investigate concerns involving children or issues related to the death of a child or youth within his mandate.

As currently written, the proposed amendments prohibit the Advocate's Office from investigating matters falling within the jurisdiction of the Office of the Chief Coroner or any committees that report to the Chief Coroner as well as matters eligible for review or that have been decided by the Child and Family Services Review Board-unless the Provincial Advocate wishes to undertake a systemic investigation. While the Provincial Advocate has the greatest respect for both bodies, and has no interest in duplicating the work of either, these exclusions are too restrictive.

¹¹ Annex 10, s. 7, amending section 15 of the Act

The Provincial Advocate recommends that prohibited matters under sections 16.4(a)1. to 4. be deleted from Bill 8 allowing the Advocate's Office to investigate where no other body has assumed jurisdiction and to allow for streamlined and effective processes of investigation.

RECOMMENDATION 9

PROHIBITIONS LIMITING INVESTIGATIVE POWERS: That prohibited matters under sections 16.4(a)1. to 4. and 6. be DELETED from Bill 8.

GAPS: VULNERABLE CHILDREN AND YOUTH, NO INVESTIGATION POWERS

The amendments proposed in Bill 8 exclude three vulnerable groups of children and youth from requesting the Advocate's Office to investigate their concerns:

- (i) Vulnerable children and youth in the current mandate;
- (ii) Youth who receive services from the government up to age 25; and
- (iii) Children in unlicensed facilities.

VULNERABLE CHILDREN IN THE CURRENT MANDATE

Children and youth within the mandate of the Advocate's Office include those seeking or receiving services in the following sectors: child welfare, youth justice, children's mental health, developmental services, children's treatment centres, the provincial and demonstration schools, First Nations children and youth, and children and youth with special needs. These children and youth are equally as vulnerable as the children in the care of a children's aid society and the Advocate's Office believes that the new grant of investigative powers should include the ability to investigate the complaints of these young people as well.

RECOMMENDATION 10

EXTENDING INVESTIGATIVE POWERS: OTHER VULNERABLE CHILDREN: That Bill 8 be amended by granting the Provincial Advocate powers of investigation regarding children seeking or receiving services in all areas of the Advocate's mandate, including children's mental health, youth justice, developmental services, and the provincial and demonstration schools for the deaf, blind, and severely learning disabled, and children and youth with special needs.

YOUTH RECEIVING SERVICES UP TO AGE 25

Many young people continue to receive services from the government up to age 25. The Provincial Advocate should be permitted to investigate the concerns of any young person still receiving services from an agency funded by the Ministry of Children and Youth Services up to the day of their 25th birthday.

RECOMMENDATION 11

YOUNG PEOPLE RECEIVING SERVICES: That the Provincial Advocate be permitted to investigate the concerns of young people receiving services from an agency funded by the Ministry of Children and Youth Services up to their 25th birthday.

YOUTH IN UNLICENSED PLACEMENTS

Investigations are restricted to “licensed” residential placements. Young people may also be placed in unlicensed settings, which makes them even more vulnerable, and should be entitled to have concerns about their placement investigated by the Provincial Advocate.

RECOMMENDATION 12

UNLICENSED RESIDENTIAL PLACEMENTS: That the Provincial Advocate be permitted to investigate the concerns of young people placed in an unlicensed residential setting.

LIMITATIONS ON PUBLICATION AND REPORTING

The Provincial Advocate seeks an amendment to Bill 8 to permit his Office to publish information about legal proceedings, including inquests and criminal trials involving children and youth who have died in the care of children's aid or in custodial facilities, where the information has already been made publicly available through the Coroner's Office or the courts.

This example illustrates the problems with the present statute. The Advocate's Office has established a database which provides information about Coroner's inquest recommendations relating to children and youth who have died in the care of a children's aid society, or in custodial facilities, to enable advocacy about the recommendations of Coroner's inquests related to children and youth.¹² Coroner's inquests represent a key advocacy tool for the Advocate's Office and provide a forum for young people to play a role in identifying the failings in the care systems and in generating and advocating for change where necessary. The findings in an inquest initiated by the Coroner are used to generate recommendations to help improve public safety and prevent deaths in similar circumstances. In general, inquests are open to the public. In an inquest, a jury's verdict, its recommendations, and the presiding Coroner's verdict explanation are all public documents available from the Coroner's Office upon request and on the electronic legal database known as “Canlii”.¹³ Details and news releases of inquests which disclose identifying information about a deceased child are also available on the Coroner's website. Inquests often receive intense media scrutiny, and the names of children who have died are publicly available.

However, section 20, paragraph 10 of the *Provincial Advocate for Children and Youth Act, 2007*, prohibits the Provincial Advocate from providing complete Coroner's Inquest information on the Office's Inquest Database. The Act prohibits the publication of the name or identifying information without consent. Where the identifying information of such children and youth have been made public by the Coroner's Office, or through a criminal trial, for example, the Advocate's Office seeks authority to make such identifying information public as well.

The ability to track whether jury inquest recommendations have been implemented by the recipients of the recommendations is key to the advocacy efforts of the Provincial Advocate on behalf of children and youth.

¹² R.S.O. 1990, c. C.37.

¹³ Canlii.org

Notably, other provinces that have child advocates have the authority to publish identifying information in certain circumstances. For example, in Manitoba and Saskatchewan, in performance of his or her duties, the child advocate may disclose any matter he or she considers necessary, with certain limitations. Attached as **Appendix "C"** is a summary of other provincial child advocacy statutes that contain access to information provisions.

The Provincial Advocate therefore recommends the following amendment to the Act to allow him to publish information regarding deceased children or youth within his mandate, where the information is already available to the general public through inquest or court proceedings:

RECOMMENDATION 13

PUBLICATION OF IDENTIFYING INFORMATION: That the Act be amended to provide that despite section 20, paragraph 10, or any other Act, the Advocate may disclose in a public report or a public communication a name or identifying information of a deceased child or youth if, at the time of such disclosure, that information has been made public through inquest or court proceedings.

With this amendment in place, the Advocate's Office could advocate for change based on the recommendations made in inquests involving children and youth, or through criminal cases resulting in harm to children or youth. Without the amendment, the Provincial Advocate is not able to effectively advocate for the changes recommended in Coroner's Inquests and fulfill his mandate to serve youth in care and respond to issues relating to the rights of children.

WHISTLEBLOWER PROTECTION

The Provincial Advocate supports a broader legislative approach to the protection of whistleblowers who provide information to the Provincial Advocate in furtherance of his mandate. This would include employees of municipal and transfer payment agencies who see abuse or mistreatment of children and wish to voluntarily come forward to ensure that children and youth are protected. "Whistleblowing" is generally defined as "the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action".¹⁴ There is some limited whistle-blower protection in Ontario: Section 425.1 of the *Criminal Code* provides limited protection where disclosure is made to a law enforcement official. The *Public Service of Ontario Act, 2006* (PSOA) protects Ontario public servants, including many employed in youth justice facilities.¹⁵ However, the majority of employees working with and in a position to observe issues regarding the treatment of children and youth are children's aid society and group transfer payment agency employees, who are not covered by the PSOA. Therefore, the Provincial Advocate requests this Legislature to enact legislation extending whistleblower protection to those employees not covered by the PSOA, where a disclosure is made to the Office of the Provincial Advocate for Children and Youth involving a risk of harm to children or youth within his mandate.

¹⁴ Janet P. Near & Marcia P. Miceli, "Organizational Dissidence: The Case of Whistle-Blowing" (1985) 4 *Journal of Business Ethics* 1 at 4

¹⁵ *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Schedule A, Part VI, ss. 108-148

RECOMMENDATION 14

WHISTLE-BLOWING: The Provincial Advocate requests this Legislature to enact legislation extending whistleblower protection to those employees not covered by the *Public Service of Ontario Act, 2006*, where a disclosure is made to the Office of the Provincial Advocate for Children and Youth involving a risk of harm to children and youth within its mandate.

CONCLUSION

As members of the Legislative Assembly may be aware, the current Provincial Advocate has been concerned about the limitations in the *Provincial Advocate for Children and Youth Act, 2007* since shortly after his appointment in 2009. His initial concerns related to access to information, specifically with regard to information about the deaths of children and youth who fell within the mandate of the Advocate's Office and young people who alleged that they had been assaulted by staff in youth justice facilities. These concerns have been outlined in a number of public reports released by the Advocate's Office and are not alleviated by the amendments in Bill 8.

While the Provincial Advocate welcomes the new grant of investigative powers, he believes that all of the children and youth in his mandate are equally vulnerable, and that he should have the authority to fully investigate the concerns of all young people not just those who have been placed in the care of a children's aid society.

Also, he seeks whistleblower protection for employees of service providers who make a report to the Provincial Advocate.

The Provincial Advocate additionally requests the ability to communicate Coroner's recommendations where the information is already publicly available.

In working with the ministries, institutions, and services that make up the children's services sector, the Advocate's Office has never found anyone who wants to harm children. On the contrary, we have found common ground in the desire to see the Province's children thrive.

Unfortunately, there is a gap between the stated goals found in policies, directives, frameworks, and strategies and the lived experiences of children and youth. This gap is compounded by a fear of transparency.

The amendments put forward in this submission will ensure that Ontario's Provincial Advocate for Children and Youth will be on equal footing with all of the other independent Officers of the Ontario Legislature and the other provincial and territorial child and youth advocate offices across Canada. By granting these significant powers, the Legislature will enable the Provincial Advocate to better protect children and youth, hold institutions to account, and more powerfully elevate the voices of young people in the province.

RECOMMENDATION 1

TERM OF REAPPOINTMENT: That Schedule 10, section 4 of the Act which would amend subsection 6(1) of the Act NOT be approved, so that the current term of reappointment remain as an additional term of five years.

RECOMMENDATION 2

STRUCTURE AND STAFFING OF OFFICE: Section 5 of Schedule 10, which implements directions about the structure of the Advocates' Office by adding s. 13.1, NOT be approved.

RECOMMENDATION 2 Alternate, in the event Recommendation 2 is not accepted

STAFF INVESTIGATIVE TEAM: That the requirement in section 13.1(2) that the investigative team include individuals with "significant experience in investigations and child protection..." should be amended to read "significant experience in investigative practice and/or analytical thinking, typically acquired in fields such as law, policing, child protection, pediatric health, forensics, public health, academia and research."

RECOMMENDATION 3

INFORMATION SHARING WITHIN THE OFFICE: That Section 13.1(4) NOT be approved, and the provisions restricting sharing of information be replaced with the following provisions adapted from the regulation governing the Ombudsman:

The Provincial Advocate and his or her staff shall not, except where permitted by the Act in carrying out functions thereunder, disclose to any third party any information received by the Provincial Advocate or his or her staff while carrying out any of the functions of the Provincial Advocate under the Act.

A member of the Provincial Advocate's staff carrying out the Advocate's functions under the Act, shall not express to anyone, other than to the Provincial Advocate or to his or her authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization or institution in question or respecting anything else arising out of the investigation of the complaint by the Provincial Advocate and his staff.

RECOMMENDATION 4

RIGHT TO OBTAIN INFORMATION: The Provincial Advocate may from time to time require any officer, employee or member of any governmental organization, public sector body or service provider, who in his or her opinion is able to give any information relating to any matter that the Provincial Advocate believes to be necessary to perform his or her duties under this Act, to furnish to him or her any such information, and to produce any documents or things which in the Provincial Advocate's opinion relate to any such matter and which may be in the possession or under the control of that person.

RECOMMENDATION 5

POWERS PARAMOUNT: The powers conferred on the Provincial Advocate by this Act may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question.

RECOMMENDATION 6

PROCEEDINGS NOT TO BE QUESTIONED OR SUBJECT TO REVIEW: No proceeding of the Provincial Advocate shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Provincial Advocate is liable to be challenged, reviewed, quashed or called in question in any court.

RECOMMENDATION 7.1

PROCEEDINGS TO BE PRIVILEGED: No proceedings lie against the Provincial Advocate, or against any person holding any office or appointment under the Provincial Advocate, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

RECOMMENDATION 7.2

PROVINCIAL ADVOCATE NOT TO BE CALLED TO GIVE EVIDENCE: The Provincial Advocate, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.

RECOMMENDATION 7.3

INFORMATION/DOCUMENTS TREATED AS PRIVILEGED: Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Provincial Advocate under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

RECOMMENDATION 8

POWER OF ENTRY OF PREMISES: For the purposes of this Act, the Provincial Advocate may at any time enter upon any premises occupied by any governmental organization, public sector body or service provider and inspect the premises and carry out therein any investigation within his or her jurisdiction.

RECOMMENDATION 9

PROHIBITIONS LIMITING INVESTIGATIVE POWERS: That prohibited matters under sections 16.4(a)1. to 4. and 6. be DELETED from Bill 8.

RECOMMENDATION 10

EXTENDING INVESTIGATIVE POWERS: OTHER VULNERABLE CHILDREN: That Bill 8 be amended by granting the Provincial Advocate powers of investigation regarding children seeking or receiving services in all areas of the Advocate's mandate, including children's mental health, youth justice, developmental services, and the provincial and demonstration schools for the deaf, blind, and severely learning disabled, and children and youth with special needs.

RECOMMENDATION 11

YOUNG PEOPLE RECEIVING SERVICES: That the Provincial Advocate be permitted to investigate the concerns of young people receiving services from an agency funded by the Ministry of Children and Youth Services up to the day of their 25th birthday.

RECOMMENDATION 12

UNLICENSED RESIDENTIAL PLACEMENTS: That the Provincial Advocate be permitted to investigate the concerns of young people placed in an unlicensed residential setting.

RECOMMENDATION 13

PUBLICATION OF IDENTIFYING INFORMATION: That the Act be amended to provide that despite section 20, paragraph 10, or any other Act, the Advocate may disclose in a public report or a public communication a name or identifying information of a deceased child or youth if, at the time of such disclosure, that information has been made public through inquest or court proceedings.

RECOMMENDATION 14

WHISTLE-BLOWING: The Provincial Advocate requests this Legislature to enact legislation extending whistleblower protection to those employees not covered by the *Public Service of Ontario Act, 2006*, where a disclosure is made to the Office of the Provincial Advocate for Children and Youth involving a risk of harm to children and youth within his mandate.

A COMPARISON OF PROVISIONS GOVERNING TERM, OFFICE STRUCTURE AND STAFFING, AND POWERS TO OBTAIN INFORMATION

AUDITOR GENERAL

Auditor General Act

The Office of the Auditor General

[2.](#) The Office of the Auditor General consists of the Auditor General, the Deputy Auditor General, the Advertising Commissioner and such employees as the Auditor General may require for the proper conduct of the business of the Office. 2004, c. 17, s. 4; 2004, c. 20, s. 13 (1)

Term of Office

[4. \(1\)](#) The term of office of the Auditor General is 10 years and a person is not eligible to be appointed to more than one term of office. 2004, c. 17, s. 6

Duty to furnish information

[10. \(1\)](#) Every ministry of the public service, every agency of the Crown, every Crown controlled corporation and every grant recipient shall give the Auditor General the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

Access to records

[10. \(2\)](#) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

Power to examine on oath

[11. \(1\)](#) The Auditor General may examine any person on oath on any matter pertinent to an audit or examination under this Act. 2004, c. 17, s. 13.

Application of *Public Inquiries Act, 2009*

[11. \(2\)](#) Section 33 of the *Public Inquiries Act, 2009* applies to the examination by the Auditor General. 2009, c. 33, Sched. 6, s. 42.

Public Inquiries Act

[33. \(1\)](#) In this section,

“inquiry” includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 33 (1).

Standard procedure

[\(2\)](#) This section applies where another Act or a regulation confers on a person or body the power to conduct an inquiry in accordance with this section or certain provisions of this section. 2009, c. 33, Sched. 6, s. 33 (2).

Power to summon witnesses, papers, etc.

[\(3\)](#) The person or body conducting the inquiry may require any person by summons,
(a) to give evidence on oath or affirmation at the inquiry; or
(b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13). 2009, c. 33, Sched. 6, s. 33 (3).

CHIEF ELECTORAL OFFICER

Election Act

Chief Electoral Officers

[4. \(1\)](#) The Lieutenant Governor in Council, on the address of the Assembly, shall appoint, as an officer of the Assembly, a Chief Electoral Officer, who shall be responsible for the administration of this Act and the Lieutenant Governor in Council may appoint, as an officer of the Assembly, a Deputy Chief Electoral Officer. R.S.O. 1990, c. E.6, s. 4 (1); 2007, c. 15, ss. 28, 40 (1).

Application of Public Inquiries Act, 2009

[4.0.1](#) Section 33 of the Public Inquiries Act, 2009 applies to any investigation or examination under this Act by the Chief Electoral Officer. 2009, c. 33, Sched. 6, s. 54 (1).

Public Inquiries Act

[33. \(1\)](#) In this section,

“inquiry” includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 33 (1).

Standard procedure

[\(2\)](#) This section applies where another Act or a regulation confers on a person or body the power to conduct an inquiry in accordance with this section or certain provisions of this section. 2009, c. 33, Sched. 6, s. 33 (2).

Power to summon witnesses, papers, etc.

[\(3\)](#) The person or body conducting the inquiry may require any person by summons,
(a) to give evidence on oath or affirmation at the inquiry; or
(b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13). 2009, c. 33, Sched. 6, s. 33 (3).

Election Finances Act

Powers of inspection

[6.](#) For the purposes of an investigation or examination under this Act or the Taxpayer Protection Act, 1999, a representative of the Chief Electoral Officer, on producing that person’s authorization to enter the premises (referred to in the authorization) in which the books, papers and documents of a political party, constituency association, candidate or leadership contestant relevant to the subject-matter of the investigation or examination are kept, may at any reasonable time enter such premises and examine such books, papers and documents. R.S.O. 1990, c. E.7, s. 6; 1998, c. 9, s. 53; 1999, c. 7, Sched. A, s. 23 (9); 2007, c. 15, s. 40 (1).

Information

[7. \(1\)](#) If information with respect to the affairs of a party, constituency association, candidate or leadership contestant that is registered under this Act is reasonably necessary for the performance of the Chief Electoral Officer’s duties under this Act, he or she may request the information and the registered entity or person shall provide it. 1998, c. 9, s. 54; 2007, c. 15, s. 40 (1).

ENVIRONMENTAL COMMISSIONER

Environmental Bill of Rights

Employees

[54. \(1\)](#) Subject to the approval of the Board of Internal Economy, the Environmental Commissioner may employ such employees as the Commissioner considers necessary for the efficient operation of his or her office, and may determine their salaries or wages and the terms and conditions of their employment. 2006, c. 35, Sched. C, s. 35 (1).

Term of office

[49. \(3\)](#) The Environmental Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms. 1993, c. 28, s. 49 (3).

Examination on oath or affirmation

[60. \(1\)](#) The Environmental Commissioner may examine any person on oath or solemn affirmation on any matter related to the performance of the Commissioner's duties under this Act and may in the course of the examination require the production in evidence of documents or other things. 1993, c. 28, s. 60 (1).

Application of Public Inquiries Act, 2009

[\(2\)](#) Section 33 of the *Public Inquiries Act, 2009* applies to an examination under subsection (1). 2009, c. 33, Sched. 6, s. 57.

Public Inquiries Act

[33. \(1\)](#) In this section, "inquiry" includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 33 (1).

Standard procedure

[\(2\)](#) This section applies where another Act or a regulation confers on a person or body the power to conduct an inquiry in accordance with this section or certain provisions of this section. 2009, c. 33, Sched. 6, s. 33 (2).

Power to summon witnesses, papers, etc.

[\(3\)](#) The person or body conducting the inquiry may require any person by summons,
(a) to give evidence on oath or affirmation at the inquiry; or
(b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13). 2009, c. 33, Sched. 6, s. 33 (3).

FRENCH LANGUAGE SERVICES COMMISSIONER

French Language Services Act

Employees

[12. \(1\)](#) Subject to the approval of the Board of Internal Economy, the Commissioner may employ the employees whom the Commissioner considers necessary for the efficient and proper operation of the Office of the French Language Services Commissioner and may determine their salary or wages and terms and conditions of employment. 2013, c. 16, s. 6.

Term of office

[12.1 \(5\)](#) The Commissioner shall hold office for a term of five years and may be reappointed for one further term of five years. 2013, c. 16, s. 6.

Application of Public Inquiries Act, 2009

[12.4 \(3\)](#) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation by the Commissioner. 2009, c. 33, Sched. 6, s. 60.

Public Inquiries Act

[33. \(1\)](#) In this section, "inquiry" includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable. 2009, c. 33, Sched. 6, s. 33 (1).

Standard procedure

[\(2\)](#) This section applies where another Act or a regulation confers on a person or body the power to conduct an inquiry in accordance with this section or certain provisions of this section. 2009, c. 33, Sched. 6, s. 33 (2).

Power to summon witnesses, papers, etc.

[\(3\)](#) The person or body conducting the inquiry may require any person by summons,
(a) to give evidence on oath or affirmation at the inquiry; or
(b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13). 2009, c. 33, Sched. 6, s. 33 (3).

INFORMATION AND PRIVACY COMMISSIONER

Freedom of Information and Protection of Privacy Act

Staff

[8. \(1\)](#) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. F.31, s. 8 (1).

Term and removal from office

[3. \(3\)](#) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. F.31, s. 4 (3).

Powers of Commissioner

[52. \(4\)](#) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation. R.S.O. 1990, c. F.31, s. 52 (4).

INTEGRITY COMMISSIONER

Member's Integrity Act

Staff

[\(10\)](#) The employees who are necessary for the performance of the Commissioner's duties shall be members of the staff of the Office of the Assembly. 1994, c. 38, s. 23 (10).

Term of office

[\(3\)](#) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms. 1994, c. 38, s. 23 (3).

Inquiry by Commissioner

[31. \(1\)](#) When a matter is referred to the Commissioner under section 30, the Commissioner may conduct an inquiry, after giving the member whose conduct is concerned reasonable notice. 1994, c. 38, s. 31 (1).

Same

[\(2\)](#) If the matter was referred by a member,
(a) the Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry; and
(b) the Commissioner shall report his or her opinion to the Speaker. 1994, c. 38, s. 31 (2); 2009, c. 33, Sched. 6, s. 66; 2010, c. 5, s. 14 (1).

Public Service of Ontario Act, 2006

Powers on investigation

[126. \(1\)](#) The Integrity Commissioner may require any public servant or former public servant to,

- (a) provide any information that he or she may have if, in the opinion of the Commissioner, the information may be relevant to the investigation;
- (b) produce any relevant document or thing that may be in his or her possession or under his or her control if, in the opinion of the Commissioner, the document or thing may be relevant to the investigation. 2006, c. 35, Sched. A, s. 126 (1).

Oral evidence

[126. \(2\)](#) The Integrity Commissioner may summon any public servant or former public servant who, in the Commissioner's opinion, is able to give evidence about any matter that may be relevant to the investigation and may examine him or her, on oath or affirmation. 2006, c. 35, Sched. A, s. 126 (2).

Inspection of premises

[126. \(3\)](#) The Integrity Commissioner may enter and inspect any premises of the public service of Ontario, at any reasonable time, for the purposes of the investigation. 2006, c. 35, Sched. A, s. 126 (3).

Same

[126. \(4\)](#) Before entering premises under subsection (3), the Integrity Commissioner shall notify the head of the organization occupying the premises of his or her intention to do so. 2006, c. 35, Sched. A, s. 126 (4).

OMBUDSMAN

Ombudsman Act

Employees

[8. \(1\)](#) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such employees as the Ombudsman considers necessary for the efficient operation of his or her office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. O.6, s. 8 (1).

Term of office and removal

[4. \(1\)](#) The Ombudsman shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. O.6, s. 4 (1); 1999, c. 5, s. 4 (1); 2005, c. 29, s. 5 (1).

Evidence

[19. \(1\)](#) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person. R.S.O. 1990, c. O.6, s. 19 (1).

Examination under oath

[19. \(2\)](#) The Ombudsman may summon before him or her and examine on oath,

- (a) any complainant;
- (b) any person who is an officer or employee or member of any governmental organization and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1);
- or
- (c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1), and for that purpose may administer an oath. R.S.O. 1990, c. O.6, s. 19 (2).

APPENDIX “C”

POWERS OF CHILD ADVOCATES ACROSS CANADA TO OBTAIN INFORMATION

The Provincial Advocate for Children and Youth of Ontario has the power, under s 16.(1) (b) of the *Provincial Advocate for Children and Youth Act*, to “conduct reviews, whether in response to a complaint or under the Advocate’s own initiative”. This statute defines a “review” as “gathering and assessing information for the purpose of advocacy” and defines a “systemic review” as providing advocacy to a group of children or youth who are in similar circumstances, either in response to a complaint or request by one child or youth, or own the Advocate’s own initiative and includes the review of facilities, systems, agencies, service providers, and processes as permitted by this and any other Act”.

Unfortunately, unlike the other provincial advocate offices across the country, there is no corresponding power to compel information from services providers, institutions, or government and public bodies.

The information below is based on a scan conducted by Ontario’s Office of the Provincial Advocate for Children and Youth and compares access to information powers between provincial and territorial advocate offices across the country. In reviewing this section, please note the following: Prince Edward Island does not have a provincial advocate office. The Yukon Territory has a Child and Youth Advocate; Nunavut has appointed a Child and Youth Advocate and the office is currently being established; and the North West Territories does not. It is also important to be aware that the Quebec Child Advocate operates as part of that province’s Human Rights Commission, and the New Brunswick Child Advocate’s Office operates in conjunction with the New Brunswick Ombudsman’s Office.

ALBERTA

The Child and Youth Advocate Act

13 (1) The Advocate is entitled to any information, including personal information and health information, that

- a) is in the custody or under the control of a public body or custodian, and
- b) is necessary to enable the Advocate to exercise the Advocate’s powers or perform the Advocate’s duties or functions under this Act.

(2) A public body or a custodian that is a public body shall, on request, disclose to the Advocate the information to which the Advocate is entitled under subsection (1).

(3) A custodian that is not a public body may, on request, disclose to the Advocate the information to which the Advocate is entitled under subsection (1).

(4) Nothing in this section compels the disclosure of any information or records that are subject to any type of legal privilege, including solicitor-client privilege and parliamentary privilege.

BRITISH COLUMBIA

Representative for Children and Youth Act

10 (1) In this section, “**officer of the Legislature**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*¹⁶, but does not include the representative.

(2) The representative has the right to any information that

¹⁶ See http://www.bclaws.ca/civix/document/id/complete/statreg/96165_00

- a) is in the custody or control of
 - i. a public body other than an officer of the Legislature, or
 - ii. a director, and
- b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.

(3) The public body or director must disclose to the representative the information to which the representative is entitled under subsection (2).

(4) This section applies despite

- a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
- b) any other enactment, other than a restriction in section 51 of the [Evidence Act](#)¹⁷.

MANITOBA

The Child and Family Services Act

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

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

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

NEW BRUNSWICK

Child and Youth Advocate Act

Access to information

21 (1) Notwithstanding any other Act or claim of privilege, and subject to subsection (3), the Advocate has a right to all information and documentation that is necessary to enable the Advocate to perform the duties and exercise the powers under this Act.

21 (2) Subject to subsection (3), if the Advocate requests a person to provide information relating to a matter being investigated or reviewed by the Advocate and the Advocate is of the opinion that the person is able to provide the information, the person shall provide the information and produce any documents or papers that, in the opinion of the Advocate, relate to the matter and that may be in the possession or under the control of the person.

21 (3) The Advocate does not have a right to the following information or documents:

- a) information or documents protected by a claim of solicitor-client privilege; and
- b) information or documents certified by the Attorney General as disclosing the following:
 - i. the deliberations of the Executive Council; or
 - ii. the proceedings of the Executive Council or a committee of the Executive Council.

¹⁷ See http://www.bclaws.ca/civix/document/id/complete/statreg/96124_01

NEWFOUNDLAND AND LABRADOR

Child and Youth Advocate Act

[Note that the advocate is entitled to “receive, review and investigate a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate”.

21. (1) The advocate may require a person who, in his or her opinion, is able to give information relating to a matter being investigated by him or her

- a) to furnish the information to him or her; and
- b) to produce a document, paper or thing that in his or her opinion relates to the matter being investigated and that may be in the possession or under the control of the person, whether or not the person is an officer, employee or member of a department or an agency of the government and whether or not the document, paper or thing is in the custody or under the control of the department or agency of the government.

NOVA SCOTIA

Ombudsman Act

Furnishing of information

17 (1) Subject to subsections (2), (3), (4), (5), (6) and (7) and Section 18, where the Ombudsman requests a person who, in the opinion of the Ombudsman, is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter and that may be in the possession or under the control of that person whether or not that person is an officer of a department or municipal unit, and whether or not the documents and papers are in the custody or under the control of that department or municipal unit.

(2) The Ombudsman may summon before him and examine on oath

- a) any officer of a department or municipal unit who, in his opinion, is able to give any information referred to in subsection (1);
- b) any complainant; and
- c) with the approval of the Attorney General, any other person who, in the opinion of the Ombudsman, is able to give any information referred to in subsection (1).

NUNAVUT

Consolidation of Representative for Child and Youth Act

Collection of Information and Confidentiality

Collection of information

23. The Representative may collect such information as is necessary to carry out his or her duties and to exercise his or her powers.

Access to Information and Protection of Privacy Act does not apply

24.(6) Despite any provision of the Access to Information and Protection of Privacy Act, that Act does not apply to the Representative or any person acting on behalf of or under the direction of the Representative or to any records of the office of the Representative.

QUEBEC

Youth Protection Act

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

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

SASKATCHEWAN

The Advocate for Children and Youth Act

[Note that Saskatchewan's Advocate is entitled to, "receive and investigate any matter that comes to his/her attention from any source...".]

Power to require information and examine persons

26 (1) Subject to section 27, the Advocate may require any person who in the Advocate's opinion is able to give any information relating to any matter being investigated pursuant to this Act:

- a) to furnish information to him or her; and
- b) to produce any document, paper or thing that, in the Advocate's opinion:
 - i. relates to the matter being investigated; and
 - ii. may be in the possession or under the control of that person.

(2) The Advocate may exercise the powers mentioned in subsection (1) whether or not:

- a) the person mentioned in that subsection is an officer or employee of a ministry, agency of the government or publicly-funded health entity or a board member; and
- b) the document, paper or thing is in the custody or under the control of a ministry, agency of the government or publicly-funded health entity

YUKON TERRITORY

Child and Youth Advocate Act

23 (1) Subject to subsection (3), the Advocate has the right to have any information that is in the custody or control of a public body or a school board that is providing designated services and is necessary to enable the Advocate to exercise their powers or perform their functions and duties under this Act, including information about persons other than a child or youth for whom the Advocate is carrying out individual advocacy functions under section 11 [primary role].

**APPENDIX “D” SCHEDULE 10
AMENDMENTS TO THE *PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH
ACT, 2007***

1. (1) Section 1 of the Provincial Advocate for Children and Youth Act, 2007 is amended by striking out “and” at the end of clause (b), by adding “and” at the end of clause (c) and by adding the following clause:

(d) conduct investigations and make recommendations to improve children’s aid society services and services provided by residential licensees where a children’s aid society is the placing agency.

(2) Section 1 of the Act is amended by adding the following subsection:

Paramount purpose

(2) In conducting investigations and making recommendations under clause (1) (d), the Advocate shall have regard to the paramount purpose of the Child and Family Services Act, to promote the best interests, protection and well-being of children.

2. (1) The definition of “advocacy” in subsection 2 (1) of the Act is amended by striking out “sections 15 and 16” and substituting “subsection 15 (1) and section 16”.

(2) Subsection 2 (1) of the Act is amended by adding the following definitions:

“Child and Family Services Review Board” means the Child and Family Services Review Board continued under Part IX of the Child and Family Services Act; (“Commission de révision des services à l’enfance et à la famille”)

“children’s aid society service” means the functions of a children’s aid society listed in subsection 15 (3) of the Child and Family Services Act; (“service d’une société d’aide à l’enfance”)

“Director” means the Director appointed under subsection 5 (1) of the Child and Family Services Act; (“directeur”)

“director of investigations” means the director of investigations appointed under section 4; (“directeur des enquêtes”)

“Ministry” means the Ministry of the Minister; (“ministère”)

“placing agency” means a children’s aid society that places a child in residential care or foster care; (“agence de placement”)

“residential licensee” means a licensee within the meaning of subsection 3 (1) of the Child and Family Services Act; (“titulaire de permis d’un foyer”)

“service”, for the purposes of clauses 1 (d) and 15 (2) (b), has the same meaning as in subsection 3 (1) of the Child and Family Services Act, except it does not include a youth justice service; (“service”)

“systemic investigation” means an investigation under subsection 15 (2) concerning a group of children who are in similar circumstances; (“enquête systémique”)

3. Section 4 of the Act is amended by adding the following subsections:

Director of investigations, appointment

(2) The Advocate shall appoint a director of investigations to oversee and manage the investigative function of the office as described in subsection 15 (2).

Same, qualifications

(3) The director of investigations must be a person with significant experience in investigations and child protection.

4. Subsection 6 (1) of the Act is revoked and the following substituted:

Term of office

(1) Subject to subsection (2), the Advocate holds office for a term of five years, and may be reappointed for one further term of up to five years.

Same

(1.1) The Advocate continues to hold office after the expiry of his or her term until a successor is appointed.

5. The Act is amended by adding the following section:

Staff, investigative team

13.1 (1) The director of investigations shall, from among staff retained by the Advocate under section 13, establish an investigative team,

(a) to conduct investigations under section 16.1; and

(b) to provide advice and guidance to the Advocate with respect to investigations.

Qualifications

(2) The investigative team must consist of individuals with significant experience in investigations and child protection and may also include individuals with significant experience in other areas relevant to investigations such as pediatric health services, children's mental health services or child development services.

Separation of investigative function from advocacy function

(3) The director of investigations and the investigative team shall not concurrently conduct investigations and provide advocacy under subsection 15 (1).

No sharing of information

(4) Subject to section 21.1, the Advocate, the director of investigations and the investigative team shall not share information respecting an investigation, including personal information, with anyone, including staff retained by the Advocate other than the Advocate and members of the investigative team.

6. Subsection 14 (2) of the Act is amended by striking out "section 21" at the end and substituting "section 21 or 21.1".

7. Section 15 of the Act is amended by adding the following subsections:

Same, investigative function

(2) In addition to the functions set out in subsection (1), the Advocate has the function of investigating any matter that comes to his or her attention from any source or on the Advocate's own initiative concerning a child or group of children, including a systemic investigation, with respect to,

(a) a children's aid society service; or

(b) a service provided by a residential licensee where a children's aid society is the placing agency.

Application to Divisional Court to determine jurisdiction

(3) If any question arises whether the Advocate has jurisdiction to investigate any matter under this Act, the Advocate may, if he or she thinks fit, apply to the Divisional Court for a declaratory order determining the question.

8. (1) Subsection 16 (1) of the Act is amended by striking out “In carrying out the functions of the Advocate” at the beginning in the portion before clause (a) and substituting “In carrying out the functions of the Advocate under subsection 15 (1)”.

(2) Subsection 16 (3) of the Act is amended by adding “Except in relation to the Advocate’s investigative function under subsection 15 (2)” at the beginning.

(3) Section 16 of the Act is amended by adding the following subsection:

Power not to investigate a matter

(4.1) The Advocate may in his or her discretion decide not to investigate, or, as the case may require, not to further investigate any matter if in his or her opinion, one of the following applies:

1. It appears to the Advocate that under the law or existing administrative practice there is an adequate remedy in respect of the matter, whether or not the person raising the matter has availed himself, herself, or itself of it.

2. The person who raised the matter with the Advocate has not a sufficient personal interest in the subject matter that was raised.

3. The matter is trivial, frivolous or vexatious or is not raised in good faith.

(4) Subsection 16 (5) of the Act is repealed and the following substituted:

Reasons to be given

(5) The Advocate shall give the complainant or the person who raised an investigation matter with the Advocate notice in writing of the Advocate’s decision and of the reasons for the decision, where the Advocate decides,

(a) not to act on a complaint under subsection 16 (1) or to take no further action with regard to a complaint; or

(b) not to investigate a matter under section 16.1 or further investigate the matter.

9. The Act is amended by adding the following sections:

Powers re investigative function

16.1 (1) In relation to the Advocate’s investigative function under subsection 15 (2), the Advocate may hear or obtain information from such persons as he or she thinks may be relevant to the investigation and may make such inquiries as he or she thinks may be relevant to the investigation.

Hearing not necessary

(2) For the purposes of subsection (1), it is not necessary for the Advocate to hold a hearing and no person is entitled as of right to be heard by the Advocate.

Opportunity to make representations

(3) Despite subsection (2), if at any time during the course of an investigation it appears to the Advocate that there may be sufficient grounds for him or her to make a report or recommendation that may adversely affect any of the following persons or entities, the Advocate shall give to the person or entity an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel:

1. The Minister.
2. A children's aid society.
3. A residential licensee.
4. Any other person or entity.

Compelling information or documents

(4) In carrying out his or her investigative function, the Advocate may require any officer, employee or member of any person or entity listed in subsection (3) or any other person or entity who, in the Advocate's opinion, is able to give information relating to any matter that is being investigated by the Advocate,

(a) to furnish the information; and

(b) to produce any documents or things which, in the Advocate's opinion, relate to the matter and which may be in the possession or under the control of the person or entity.

Examination under oath

(5) In carrying out his or her investigative function, the Advocate may summon any of the following individuals before him or her to examine on oath, and for that purpose may administer an oath:

1. An individual,

i. who is an officer, employee or member of any person or entity listed in subsection (3), and

ii. who, in the Advocate's opinion, is able to give any information relevant to the investigation.

2. Any other individual who, in the Advocate's opinion, is able to give any information relevant to the investigation.

Secrecy

(6) No person who is bound by the provisions of any Act, other than the Public Service of Ontario Act, 2006, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Advocate in relation to that matter, or to produce to the Advocate any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

Providing personal information despite privacy Acts

(7) Any person who is subject to the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2004 is not prevented by any provisions of those Acts from providing personal information to the Advocate when the Advocate requires the person to provide the information as part of an investigation.

Privileges

(8) For the purposes of this section, every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents and things as witnesses have in any court.

Protection

(9) Except on the trial of any person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any investigation by the Advocate is admissible in evidence against any person in any court or at any inquiry or in any other proceedings.

Right to object to answer

(10) A person giving a statement or answer in the course of any investigation by the Advocate shall be informed by the Advocate of the right to object to answer any question under section 5 of the Canada Evidence Act.

Prosecution

(11) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Advocate with respect to providing evidence.

Fees

(12) Where any person is required by the Advocate to attend before him or her for the purposes of providing evidence, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly.

Advocate may consult Minister, etc.

16.2 (1) The Advocate may, in his or her discretion, at any time during or after an investigation, consult the Minister or the administrative head of a children's aid society or residential licensee or other person or entity who is concerned in the matter of the investigation.

Advocate must consult Minister, etc.

(2) On the request of the Minister or a children's aid society or residential licensee or other person or entity in relation to any investigation, or in any case where any investigation relates to any recommendation made to the Minister, a children's aid society or residential licensee or other person or entity, the Advocate shall consult the Minister, children's aid society or residential licensee or other person or entity after making the investigation and before forming a final opinion.

Breach of duty or misconduct

(3) If during or after an investigation the Advocate is of the opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee employed at the Ministry or by a children's aid society or residential licensee, the Advocate may refer the matter to the appropriate authority.

Disclosure of certain matters not required

16.3 (1) The Advocate shall not require, in the carrying out of his or her investigative function, any information or answer to be given or, as the case may be, a document or thing to be produced where the Attorney General certifies that the giving of the information or the answering of the question or the production of the document or thing,

(a) might interfere with or impede the investigation, detection or prosecution of an offence; or

(b) might reveal the substance of deliberations of the Executive Council or any of its Committees without authority to do so.

Same

(2) The Advocate may not require the provision of information, the production of a document or thing or the giving of an answer if the provision, production or answer might disclose,

(a) information that is subject to solicitor-client privilege; or

(b) information prepared by or for counsel for a Ministry or a public body for use in giving legal advice or in the contemplation of for the use in litigation.

Matters excluded from investigation

16.4 (1) The Advocate is prohibited from investigating any of the following matters:

1. Subject to subsection (2), child deaths that fall within the jurisdiction of the Office of the Chief Coroner or of any committees that report to the Office of Chief Coroner.
2. Subject to subsection (2), matters that are eligible for review by or have been decided by the Child and Family Services Review Board.
3. Matters that are the subject of licensing inspections or Crown ward reviews under the Child and Family Services Act or the subject of inspections or reviews by the Ministry, where the investigation by the Advocate would, in the opinion of the Director, interfere with the inspection or review.
4. Matters that are eligible for resolution by a complaints or review process under this Act or the Child and Family Services Act, other than the reviews referred to in paragraphs 2 and 3, until after the complaints or review process is completed.
5. Matters where another investigative authority is conducting an investigation, until after that investigation is completed.
6. Matters where there is, under any Act, a right of appeal or objection or a right to apply for a hearing or review on the merits of the matter to any court or tribunal,
 - i. until the right of appeal or objection or application has been exercised in the matter, or
 - ii. until after any time for the exercise of the right has expired.

Exception, systemic investigations

(2) If the Advocate determines that a systemic investigation is necessary to promote the best interests, protection and well-being of children, the Advocate may conduct a systemic investigation into matters referred to in paragraphs 1 and 2 of subsection (1) but may only do so after the processes for dealing with the matters referred to in paragraphs 1 and 2 have been completed.

10. Section 17 of the Act is repealed and the following substituted:

Notice of review

17. (1) Where the Advocate intends to undertake an investigation or systemic review, the Advocate shall advise,

(a) the Minister or the administrative head of the children's aid society or the residential licensee that is to be affected of the intention to conduct the investigation; or

(b) the Minister or the administrative head of the Ministry, agency, service provider or other entity that is to be affected of the intention to conduct the review.

Same

(2) Where a matter comes to the attention of the Advocate that could be investigated under clause 15 (2) (b), the Advocate shall advise the Director of the matter, whether or not the Advocate intends to conduct an investigation.

11. (1) Paragraph 3 of section 20 of the Act is amended by adding "Subject to paragraph 3.1" at the beginning.

(2) Section 20 of the Act is amended by adding the following paragraph:

3.1 The Advocate may directly or indirectly collect personal information about an individual without consent during an investigation conducted pursuant to the Advocate's investigative function under subsection 15 (2), where the collection is reasonably necessary to the investigation.

(3) Paragraph 4 of section 20 of the Act is amended by adding "Subject to paragraph 4.1" at the beginning.

(4) Section 20 of the Act is amended by adding the following paragraph:

4.1 The Advocate may use personal information about an individual without consent during an investigation conducted pursuant to the Advocate's investigative function under subsection 15 (2), where the use is reasonably necessary to the investigation.

(5) Paragraph 5 of section 20 of the Act is amended by adding "Subject to paragraph 3.1" at the beginning.

(6) Paragraph 7 of section 20 of the Act is amended by adding "Subject to subsection 13.1 (4)" at the beginning.

12. The Act is amended by adding the following sections:

Reports re investigations

Contents of report

21.1 (1) If the Advocate conducts an investigation under section 15, the Advocate shall, after completing the investigation, make a report,

(a) outlining the reasons for undertaking the investigation;

(b) containing recommendations for the Minister, a children's aid society or residential licensee or any other person or entity as the Advocate considers appropriate; and

(c) addressing any other matters the Advocate considers appropriate.

Prohibition: identifying child

(2) Despite paragraph 10 of section 20, the Advocate shall not disclose in an investigative report the name of or any identifying information about the child to whom the investigation relates, and nothing in this section limits the prohibition against identifying a child set out in subsection 45 (8) of the Child and Family Services Act.

Copies of the report

(3) The Advocate shall provide a copy of the report to any person or entity referred to in clause (1) (b) that is directly or indirectly a subject of the investigation.

Reports to be public

(4) For the purposes of paragraph 10 of section 20 an investigative report under this section is a public report and the Advocate shall make copies of the report available to the public at a time and in a form and manner that the Advocate considers appropriate.

Notice of steps to Advocate

(5) The Advocate may request that any person or entity referred to in clause (1) (b) to whom a recommendation is directed notify the Advocate of the steps, if any, that the person or entity proposes to give effect to the Advocate's recommendation.

Report to Premier and Legislative Assembly

(6) If within a reasonable time after the report is made no action is taken which, in the Advocate's opinion, is adequate or appropriate, the Advocate, in his or her discretion and, after considering any comments made by or on behalf of the Minister, a children's aid society or residential licensee or any other person or entity affected,

(a) may send a copy of the report and recommendations to the Premier; and

(b) may, after sending a copy of the report to the Premier, make such report to the Legislative Assembly on the matter as he or she thinks fit.

Inclusion of comments in report

(7) The Advocate shall attach to any report sent under subsection (6) any comments made by or on behalf of the Minister, a children's aid society or residential licensee or any other person or entity affected.

Offences and Penalties

Offences

21.2 (1) Every person commits an offence who without lawful justification or excuse,

(a) wilfully obstructs, hinders or resists the Advocate or any other person in the performance of his or her functions under this Act;

(b) refuses or wilfully fails to comply with any lawful requirement of the Advocate or any other person under this Act; or

(c) wilfully makes any false statement or misleads or attempts to mislead the Advocate or any other person in the exercise of his or her functions under this Act.

Penalties

(2) Every person who commits an offence is liable on conviction to a fine of not more than \$1,000.

Commencement

13. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

Provincial Advocate
for Children & Youth

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