

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

EXECUTIVE SUMMARY

November 26, 2014

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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.

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