

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 Social Policy on
Bill 117: *Provincial Advocate for Children and Youth*
Amendment Act, 2015

November 30, 2015

OVERVIEW

The Provincial Advocate welcomes the proposed amendments to the *Provincial Advocate for Children and Youth Act, 2007* contained in Bill 117. Indeed, the spirit of this amendment is similar to one he has been seeking since he first learned of the tragic death of Katelynn Sampson, a 7 year old child whose death occurred only a few weeks after his appointment as the Provincial Advocate for Children and Youth (“Provincial Advocate”) in 2008: that his office be informed immediately when a child within his mandate dies or suffers serious bodily harm and that he is also apprised of the known circumstances relating to the death or serious injury.

While acknowledging the good intentions of those who drafted the Bill before Committee today, the language in Bill 117 is too narrowly written, with the result that some of the children within the Provincial Advocate’s mandate will be left unprotected. Further, as an added safeguard, the Provincial Advocate asks that agencies and service providers be required to notify children and youth who suffer serious bodily harm about the existence of the Office of the Provincial Advocate for Children and Youth, and that parents whose children have died while seeking or receiving services under the *Child and Family Services Act* or within 12 months of receiving services from a Children’s Aid Society also be notified of the existence of the Office.

The strong commitment of the Members of this Legislature to protect the most vulnerable children and youth in Ontario has been demonstrated through the establishment of the Office of the Provincial Child Advocate for children and Youth in 2007, as an independent Office of the Legislature. This commitment has also been manifest in the tremendous support from all political parties during the Youth Leaving Care Hearings that occurred at the Legislative Assembly in November, 2011; the passage of the *Child and Youth in Care Day Act, 2014*; and the recent amendments to the *Provincial Advocate for Children and Youth Act* granting new powers of investigation to the Office. The Provincial Advocate seeks the support of the Legislature once again, and will explain the reasons for the proposed changes to the amendments in the sections that follow below.

OFFICE OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

The children and youth 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, children’s developmental services, and children’s treatment centres. The jurisdiction of the Provincial Advocate also extends to the pupils of the provincial and residential schools for the deaf, blind, deaf-blind, and severely learning disabled; those in court holding cells and those being transported to and from court holding cells; First Nations children and youth; and children and youth with special needs. Unfortunately, as currently written, Bill 117 only applies to a child, youth or a child or youth’s family who have received service from a children’s aid society.

AMENDMENTS SOUGHT BY THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

EXTEND SAFEGUARDS TO ALL CHILDREN WITHIN THE MANDATE

Recently, the Office of the Provincial Advocate for Children and Youth (“Advocate’s Office”) reviewed 5,011 Serious Occurrence Reports that occurred between January 1st, 2014 and March 31st, 2014 and were filed with the Ministry of Children and Youth Services (“the Ministry”) by service providers operating children’s residences.

Children’s residences are defined under the *Child and Family Services Act* and include child welfare and youth justice placements, as well as agencies who offer residential care for children and youth who have special needs, developmental disabilities, require palliative care or out of home respite care. (For this sample, the Office of the Provincial Advocate for Children and Youth chose to exclude youth justice facilities.)

Of particular note is the fact that in 813 of the Serious Occurrence Reports reviewed, it is parents who are the guardians of the child, not the children’s aid society, and there was no direct involvement by a children’s aid society. The review also found that there were 334 reports of serious injury, and 19 deaths of children and youth within the Advocate’s mandate during the three-month period under review.

Of the 334 reports of serious injury, the Advocate’s Office found that 6 reports of serious injury involved use of a physical restraint, 31 were the result of a medication error, and 34 were the result of a mental health crisis. In addition to incidents involving serious injury, there were also 116 allegations of abuse, 112 of which involved young people. Of the allegations concerning young people, 32% involved allegations against staff or foster parents. Allegations of abuse during a restraint by either a foster parent or a staff member account for 13%. (The findings of this review will be released in an upcoming public report to be released by the Provincial Advocate.)

There are two points to be made about this: (1) Not all children who are placed in a children’s residence have been placed there by a children’s aid society; and (2) if there are children within the Provincial Advocate’s mandate who are dying or suffering serious injury while in residential care, then the Provincial Advocate should know about it. When the Provincial Advocate is notified, it allows the opportunity to identify potential concerns, and ask questions of the Ministry, the service providers, or the child who is subject of the report. The ability to scrutinize reports and ask questions adds another layer of safeguards for children; this protection should be extended to all children within the mandate of the Office of the Provincial Advocate for Children and Youth.

DOCUMENTS MUST BE UNREDACTED

In the Serious Occurrence Reports reviewed by the Advocate's Office, the Ministry always redacted the name, date of birth, and gender of the child. In most cases, the Ministry redacted the type of medication involved in a serious occurrence including situations where a medication error or the use of physical restraint was the reason the Serious Occurrence Report was filed. Redacting the date of birth has the effect of obscuring the frequency with which intrusive measures are used against extremely young children. In fact, the Advocate's Office had been unaware after reviewing redacted Serious Occurrence Reports that a particular residence frequently used physical restraints against a number of 10 year old children. The situation came to light once the children, despite the circumstances in which they found themselves, gathered the courage to contact the Advocate's Office and reach out to an Advocate.

It is imperative that information provided to the Office of the Provincial Advocate for Children and Youth, pursuant to Bill 117, be unredacted and complete to enable the Provincial Advocate to understand the full circumstances and context of incidents causing serious bodily harm or the deaths of children within the Office's mandate.

Any concerns that information received by the Provincial Advocate under Bill 117 would not be subject to privacy protections can be addressed quite easily by reference to section 20 (10) of the *Provincial Advocate for Children and Youth Act, 2007* which prohibits the Advocate's Office from disclosing in a public report or public communication the name or identifying information of any individual who has not consented to such disclosure.

INFORM PARENTS OF THE EXISTENCE OF THE OFFICE OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

Many parents who have lost a child have questions of those who provided services to their child before that child's death and also to the agencies mandated to investigate the death itself. The parent(s) and family members are often frustrated, confused and unsure of where to turn in order to bring their concerns forward. From his conversations with parents in these situations, it is clear to the Provincial Advocate that these parents often only become aware of the Advocate's Office by chance.

If the Provincial Advocate of Children and Youth is contacted by the parent(s) of a child who has died within his mandate, an Advocate can help the parent(s) identify questions; initiate contact with service providers or investigative bodies if appropriate; and facilitate a process that allows the parent(s) to raise questions and access information about the death of their child from involved parties. This is the basis for our recommendation that when a child connected with a service/agency funded by the Ministry dies, their parents should be notified of the existence of the Office of the Provincial Advocate for Children and Youth.

INFORM CHILDREN AND YOUTH OF THE EXISTENCE OF THE OFFICE OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

If a child who has suffered serious bodily injury while seeking or receiving approved services under the *Child and Family Services Act* is specifically made aware of their right to contact the Office of the Provincial Advocate for Children and Youth, they will have the benefit of having an Advocate to protect their rights and interests.

An Advocate can help the child or youth identify questions and concerns and initiate contact with services providers or investigative bodies if appropriate. In this way, an Advocate can act as an additional safeguard for young people. Therefore, it is recommended that Bill 117 be amended to include a legislated obligation on service providers to notify the child of the existence of the Office of the Provincial Advocate for Children and Youth when he or she has sustained a serious bodily injury.

RE: GOVERNMENT RESPONSE TO BILL 117

The Provincial Advocate is aware of the government response to Bill 117 which is understood to be as follows:

- (a) the word “promptly” is too vague and should be replaced by the words “without unreasonable delay”;
- (b) the phrase “and a children’s aid society has been involved with the child or youth” is vague and not consistent with existing legislation and should be replaced with the phrase “where a child or youth or youth’s family has or received a children’s aid society service” ; and
- (c) “critical injury” is not defined and should be replaced with “serious bodily harm” which is a term referenced in the *Child and Family Services Act* and the *Provincial Advocate for Children and Youth Act*.
- (d) add a subsection stating: “Nothing in this section affects the duty to report a suspicion under section 72 of the *Child and Family Services Act*”

The Provincial Advocate takes no issue with the government’s suggested wording in items (c) and (d) above.

However, with respect to clause (a) the Provincial Advocate for Children and Youth requests to be notified of deaths or serious injuries at the same time the Office of the Chief Coroner and the Ministry of Children and Youth Services (as the case may be) are notified. It is understood that such notifications are characterized as immediate. Therefore, the Provincial Advocate would replace the word “promptly” with the term “immediately” and rejects the suggestion of the Ministry to employ the term “without unreasonable delay”.

With respect to clause (b), the Provincial Advocate is concerned that the language is too narrow and is therefore inconsistent with his governing legislation and mandate.

Instead, the Provincial Advocate suggests the following wording:

- 18.1 (a) An agency or service provider, as the case may be, shall inform the Advocate, immediately and in writing, if it becomes aware that a child has died or suffered serious bodily harm while seeking or receiving approved services under the *Child and Family Services Act* at any time within the twelve months preceding the death or the incident causing serious bodily harm.
- (b) The information provided to the Advocate by an agency or service provider, as the case may be, pursuant to the obligation set out in 18.1(a) shall be unredacted and shall include a summary of the circumstances surrounding the death or serious bodily harm.

CONCLUSION

This Private Member's Bill would allow the Office of the Provincial Advocate for Children and Youth to obtain information about child deaths and serious bodily harm at the same time as the government — instead of waiting for months and receiving only partial information.

The worst thing that could happen to a child is that he or she dies or is seriously injured. If a child dies or is seriously injured while receiving government services, the Provincial Advocate needs to be informed and provided with complete information about the death or serious bodily harm of any child within the mandate of the Office. Parents of the children who died should also be notified of the existence of the Advocate's Office as should children who are seriously injured.

The Provincial Advocate for Children and Youth should have all of the information that the government has about children who have died in his mandate at the same time the government receives it. This would be a first step in creating a more open, transparent system which both enhances the safeguards for children and youth and provides enough information to allow the Advocate to ask the questions that might need to be asked when children die or are injured.

It is imperative that information provided to the Office of the Provincial Advocate for Children and Youth, pursuant to Bill 117, be unredacted and complete. If there is a privacy concern, the *Provincial Advocate for Children and Youth Act* prevents the Advocate from disclosing any personal information without consent. As an Officer of the Legislature, the Provincial Advocate was intended to be separate and apart from government. He is not beholden to any government ministry, government directives, or government policies and priorities. For these very reasons, it should not be the government that decides when and how the Advocate has access to information about the children in his mandate.

SUMMARY OF AMENDMENTS TO BILL 117 SOUGHT BY THE PROVINCIAL ADVOCATE

18.1 (a) An agency or service provider, as the case may be, shall inform the Advocate, immediately and in writing, if it becomes aware that a child has died or suffered serious bodily harm while seeking or receiving approved services under the *Child and Family Services Act* at any time within the twelve months preceding the death or the incident causing serious bodily harm.

(b) The information provided to the Advocate by an agency or service provider, as the case may be, pursuant to the obligation set out in 18.1(a) shall be unredacted and shall include a summary of the circumstances surrounding the death or serious bodily harm.

(c) an agency or service provider shall inform the parents of a child who has died, while seeking or receiving approved services under the *Child and Family Services Act* at any time within the twelve months preceding the death or an incident causing serious bodily injury, about the existence of, and contact information for, the Office of the Provincial Advocate for Children and Youth; and

(d) an agency or service provider shall inform a child who has suffered serious bodily injury, while seeking or receiving approved services under the *Child and Family Services Act* at any time within the twelve months of an incident causing serious bodily injury, about the existence of, and contact information for, the Office of the Provincial Advocate for Children and Youth.

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