

A Breach *of* Trust



An Investigation Into Foster Home Overcrowding
in the Saskatoon Service Centre

SASKATCHEWAN
children's
advocate
OFFICE

A Voice for Youth



A Voice for Youth

Mandate

The Children's Advocate is an independent officer of the Legislative Assembly of Saskatchewan and acts pursuant to *The Ombudsman and Children's Advocate Act*. The Children's Advocate has the legislated responsibilities, among other things, to:

- Become involved in public education respecting the interests and well-being of children.
- Receive, review and investigate any matter concerning a child or group of children, or services to a child or group of children, by any government ministry or agency.
- Resolve these matters, where appropriate, through non-adversarial approaches and/or to make recommendations on such matters.

The Children's Advocate may also conduct research, or advise any minister responsible, on any matter relating to the interests and well-being of children.

Vision

The Children's Advocate's vision is that the interests and well-being of children and youth are respected and valued in our communities and in government practice, policy and legislation.

Contact Information

Saskatchewan Children's Advocate Office
315 25th Street East
SASKATOON SK S7K 2H6
PH: (306) 933-6700 FX: (306) 933-8406
Toll Free: 1-800-322-7221
Email: childadvocate@saskcao.ca Website: www.saskcao.ca

Staff

Children's Advocate

Marvin Bernstein, B.A., LL.B., LL.M.

Director of Investigations

Marcel St.ONGe

Investigators

Leah Bitternose

Roxane Schury

Vanesa Vanstone

Director of Advocacy Services

John Brand

Advocates

Rhonda Johannson

Shaun Soonias

Elaine Thomas

Early Resolution Advocate

Chandra LePoudre

Director of Public Education and Communications

Laura Beard

Director of Administration

Bernie Rodier

Executive Administrative Assistant

Caroline Sookocheff

Administrative Assistants

Sandi Elliott

Penny Fairburn

Jennifer Kovar

Letter of Transmittal

February 25, 2009

The Honourable Don Toth
Speaker of the Legislative Assembly
Legislative Building
REGINA SK S4S 0B3

Dear Mr. Speaker:

In accordance with Section 30.1(3) of *The Ombudsman and Children's Advocate Act*, I have the honour of submitting to you and to the Members of the Legislative Assembly, the Children's Advocate report:

***A Breach of Trust:
An Investigation Into Foster Home Overcrowding
in the Saskatoon Service Centre***

Respectfully submitted,



Marvin M. Bernstein, B.A., LL.B., LL.M.
Children's Advocate
Province of Saskatchewan



A Breach of Trust:

An Investigation Into Foster Home Overcrowding in the Saskatoon Service Centre

Marvin Bernstein

Children's Advocate, Province of Saskatchewan

February 2009

WARNING: This report contains strong language and explicit content.
It is not suitable for children.

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1 Commentary

1.1 First Things First —The Children

The individual stories cited in this report are not meant to sensationalize or single out a government staff member, foster parent or child. Rather it is only by each of these groups and individuals working together with one shared goal in mind — the best interests of Saskatchewan children — will the solution to foster home overcrowding be found.



Marvin Bernstein, B.A., LL.B., LL.M.
Children's Advocate of Saskatchewan

These tragic accounts, from the pages of the Ministry of Social Services' files and the voices of so many, are too commonplace within the system for the public to close its eyes and cover its ears any longer to the state of child welfare services in our province. Prevalent and readily apparent to our investigators, these incidents indicate a dire need for the Ministry to fulfill its duty of care and review every instance of a child placed in an overcrowded foster home to ascertain whether harm has occurred to him or her, and to immediately conduct proper case planning and placement matching to ensure that their safety, security and full range of needs are met.

1.2 Wading into the Debate

crisis /ˈkrʌɪsɪs/ *n.* (*pl. crises* /-siːz/) **1** a decisive moment. **b** a time of danger or great difficulty. **2** the turning point, esp. of a disease. [Latin from Greek *krisis* 'decision', from *krinō* 'decide']

—The Concise Oxford Dictionary, 11th Edition

In conducting this investigation and preparing this report, my Office examined a very specific issue and area of the child welfare system — overcrowded foster homes managed and administered by the Ministry of Social Services in the Saskatoon Service Centre area. While the questions asked were narrow in focus, they revealed a broader picture of a foster care system mired in chronic 'crisis,' without the appropriate human or financial resources, or the collective moral fortitude or political will to meet the unique and complex needs of children coming into the care of the Minister today.

While there may be some debate about whether the foster care overcrowding situation has reached 'crisis' proportions, it is my view that it has reached the necessary threshold to draw that conclusion. We certainly appear to have met the dictionary definition when one considers so many cases of children being harmed when placed in overcrowded foster homes and that up to 21 children have been placed in one foster home in the Saskatoon Service Centre area. These numbers have no counterpart anywhere in Canada and constitute the institutionalizing of family-based foster care to a degree never previously seen in this country.

It is also my firm conviction that in this report, we reveal merely the tip of the iceberg and that if we were to delve deeper into the provincial foster care system and broader child welfare system, we would find the same symptoms of too few resources, non-compliance with policy, demoralized government staff and community members, and indifference to the rights and best interests of those children in receipt of child welfare services from the Ministry of Social Services.

Now is a decisive moment in Saskatchewan's storied history of social justice; it is a time of danger or great difficulty for children placed in overcrowded foster homes; and it is the turning point for the Ministry of Social Services to act on the recommendations of this report and finally, heal the ailing child welfare system in this province.

1.3 Twenty-Two Years is Too Long

That a debate has even existed as to whether the foster home overcrowding situation is a ‘crisis’ is astonishing considering, that the issue has been raised, criticized and condemned by the Provincial Ombudsman, Children’s Advocate and Provincial Auditor for over two decades. With each successive child death review, systemic investigation, or audit of the Ministry of Social Services, the same themes have emerged swiftly and clearly time after time, and as they do once again in this report:

- Current foster home resources do not meet the specialized needs or numbers of children coming into the care of the Minister.
- Many foster homes are significantly overcrowded and exceed the capacity of the homes to safely accommodate the number of children placed in them.
- Children in care of the Minister who are placed in overcrowded foster homes are at increased risk of physical, sexual, emotional and/or psychological harm.
- Foster parents do not receive adequate supports, resources and respite services from the Ministry of Social Services.
- Inadequate case information is documented in Ministry of Social Services files and communicated by Ministry caseworkers to foster parents regarding children placed in their care.
- There exists a Ministry of Social Services culture of non-compliance with policy and best practices related to the maximum number of children to be placed in a foster home, placement matching between foster home capabilities and foster children’s needs, and the reporting and documenting of serious case incidents and investigations into complaints of abuse and neglect in foster homes.
- There is a high turnover in Ministry caseworkers, not enough caseworkers, and not enough contact between caseworkers, foster parents and children in care.

Given that these issues have been identified and known for so long, it is puzzling that children continue to be traumatized by a foster care system where the primary goal is to protect and serve them. The fact is that the current lack of out-of-home resource capacity was predicted well in advance — as early as December 31, 1986 — when it was reported to the appropriate leaders within the then Department of Community Resources and the provincial government of the day. Over a generation of children in the care of the Minister have suffered harm as a result of being placed in overcrowded foster homes without any sense of urgency to respond to the crisis and solve the root causes demonstrated by any government during that time.

How many more incidents and child deaths will the Children’s Advocate Office have to investigate? How many more reports will the Children’s Advocate Office have to write? How many more empty promises, studies, panels and projects will have to take place before we all stand up and say, ***“enough is enough— not one more child will be harmed by the system responsible to protect them.”***

1.4 A Higher Duty of Care

It is important to realize that children in care of the Minister of Social Services often come from family homes where they have been subject to serious family dysfunction and severe forms of maltreatment. Their all too often histories of abuse and neglect, the resulting long-term physical, sexual, psychological and emotional injuries, and the fact that many are socially and economically disadvantaged, places them at high risk for poorer social, educational and medical outcomes than the general population.¹

Furthermore, once children come into care, they are at higher risk to become ‘crossover kids’, who move from placements in State care in family-based residential settings like foster homes, to mental health institutions or young offender custody. Crossover kids’ histories are marked by multiple placements in

¹ British Columbia, Ministry of Health and Office of the Child and Youth Officer, *Health and Well-Being of Children in Care in British Columbia: Report 1 on Health Services Utilization and Mortality* (Joint Special Report, September 2006) at 1.

the child welfare system, poor academic achievements and increased probability of involvement in the youth justice system.²

Alternatively, there are many parents who conscientiously, responsibly and voluntarily relinquish their children into State care and in doing so, rightly expect that their children will be at least safer and better cared for than their own abilities and capacities provide. As well, the courts, when making 'in care' or 'wardship' orders, do so, based upon an expectation that the child in question will have all of his or her needs met and best interests served, as defined in the governing child welfare legislation.

All of these factors place the Ministry of Social Services in the position of having to exercise a higher duty of care towards any child placed in its trust. Each child is unique, with individual histories and needs that must be considered carefully when planning for long or short-term placements in the child welfare system. Ultimately, a family-based environment is the preferred placement resource for children in State care. Unfortunately, an overcrowded foster home, and particularly an overcrowded therapeutic foster home, cannot possibly provide the specialized care and supervision to meet those needs.

1.5 A Breach of Trust

This investigation and report clearly demonstrates that the Ministry of Social Services has over the years breached the trust of many, including:

- Children in the care of the Minister
- Parents and families of origin
- Foster parents
- Ministry managers and front-line staff
- Judges
- The citizens of Saskatchewan

The Minister of Social Services, as legal parent/guardian, has a fiduciary duty to act as a 'prudent parent' to ensure that the rights and entitlements of children in his or her care are protected. At common law, there is a strict fiduciary relationship and duty of care owed by a guardian, such as the Minister of Social Services, towards his or her ward. The Ministry recognizes this, at least on paper, in policy that states that out-of-home care "must meet or exceed 'the best interests of the child' as defined in Section 4 of *The Child and Family Services Act*." While the Minister may delegate the authority to provide those services for children in out-home-care — that is, to Ministry staff and caregivers — he or she cannot delegate his or her legal responsibility and fiduciary duty towards those children in care.

In consideration of those duties of a prudent parent, for the Ministry of Social Services to then place children in its care in overcrowded foster homes where they are at risk of further harm — be it physical, sexual, emotional or psychological harm — is to doubly victimize these vulnerable children and to breach a sacred trust. Simply put, children in the care of the Minister of Social Services have rights and entitlements that are not being met when placed in overcrowded foster homes. Yet, beyond failing to fulfill its legal duty to keep these children safe, the Ministry of Social Services has further failed its moral duty to learn any lessons or take the necessary corrective steps when children do suffer harm as a result of this grave breach of trust.

A decade after the death of Karen Rose Quill, a 20-month-old child who died in an overcrowded foster home, the non-compliance with provincial policy that prevented her from receiving the level of services she was entitled to from the then Department of Community Resources remains a tragic legacy deeply rooted in the now Ministry of Social Services, which affects every single child placed in an overcrowded foster home today. Children in care continue to be placed in these foster homes without consideration or review of the assessed capacity of the home or foster parents to safely accommodate or care for more children. There is no placement matching or case planning being conducted in these cases, and when something does go wrong, more often than not, these incidents are not being investigated by the Ministry.

² Report and Recommendations from the Sparrow Lake Alliance Symposium on Crossover Kids, Toronto, 16 January 2004 at 1.

This isn't demonstrating a 'higher duty of care' as required by law. It isn't even demonstrating the minimal care for these children. By allowing this culture of non-compliance with policy, legislation and court orders to exist, the Ministry of Social Services is gambling with children in care every single day. For in my opinion, it is by sheer luck that there are not more catastrophic events and consequences happening in these homes. As it stands, however, the cases we are seeing should be enough for good people to act — and act now — to destroy this culture of non-compliance and work purposefully and with perseverance to build a new culture that encourages communication between Ministry managers and front-line staff, between Ministry staff and foster parents, and between children and their caregivers, whether they be Ministry staff or their foster parents.

There were many Ministry of Social Services managers and front-line child protection workers who had the courage to speak openly and honestly to our investigators about their concerns for the children who live in at-risk overcrowded foster homes. These are the very leaders and professionals we need to solve this crisis. They should be encouraged by the Ministry of Social Services to bring their stories forward, rather than living in fear that they will suffer sanctions if they question the casework and placement decisions that are being made for these children. How many more Ministry managers have to make do with inadequate human and financial resources to address the needs of children in care? How many more valuable child welfare professionals have to become disenchanted, discouraged and leave before the Ministry and government leaders stand up and say, ***“we respect your professionalism—not one more day will go by when your concerns will be ignored, discounted or discouraged, or will you be forced to place children at risk of physical, sexual, emotional or psychological harm in overcrowded foster homes.”***

The passionate and caring foster parents interviewed during this investigation were eager and hopeful to have their voices listened to, going on for hours about their experiences, both good and bad. That they have to prompt or beg Ministry staff for information on the children entrusted to their care is an insult to their integral role as partners in the system. How many more lies will they be told and intimidation will they be subjected to by Ministry staff? How many more exceptional foster parents have to throw up their hands in frustration and close their homes before the citizens of Saskatchewan stand up and say, ***“thank you—not one more day will go by when you will be disrespected, placed in harm's way or be under appreciated for the very difficult work you do to raise our sons and daughters.”***

But most importantly, it was the children we interviewed — who struck our investigators as being wise beyond their years, who wanted something more and better for themselves and their fellow foster children, and who so often have their voices go unheard when it comes to their own care — that made the biggest impact on our investigation. They must have access to justice and their best interests must be placed at the centre of any solution to foster home overcrowding. How many more of these children have to be physically, sexually, psychologically and emotionally harmed before Ministry of Social Services' staff, managers and ministers muster the collective courage and conviction to stand up and say, ***“no more excuses—not one more day will go by without changing the culture, practices and beliefs that allow such harm to occur to children in our province.”***

If we allow the breaches in trust between these groups of individuals to grow, if we get mired in finding fault and ascribing blame to a particular group or individuals, or if we marginalize any of these groups in the rebuilding process, we will not solve the foster home overcrowding crisis and we will never be able to move beyond this one issue to meet the challenges and fix the deficiencies in the broader child welfare system that are causing this compression on foster care.

1.6 A House of Cards

Our investigators' examination of overcrowded foster homes revealed that there remains an issue, first identified by the Children's Advocate Office in 2000, that within the Saskatchewan child welfare system, children are languishing in care and not receiving the benefits of systematic planning or case management processes that emphasize regular reviews, contacts and decision making. Key to this permanency planning is the active collaboration among key community agencies, childcare personnel, lawyers, judges and others working with children and their parents.

Beyond the fact that care in individual foster homes is collapsing under the weight of more and more children being stacked on top of each other, the entire child welfare system is like a house of cards; if one area is weak or something external impacts it, compression or collapse occurs in other areas. For example, in order to address both the foster care compression currently taking place in the Saskatoon Service Centre area and serve the best interests of children in care, the Ministry of Social Services must expand the range of permanency options for both alternative out-of-care and in-care placements. The narrowness and rigidity of the legislated options is forcing too many children into care and keeping them there for far too long before any permanency planning decisions are required to be made. It is important to find ways to reduce these limbo periods where children are simply being warehoused, and to create shorter cumulative maximum time periods for children in care based upon age delineation.

Historically, permanency planning alternatives consisted of the biological family or closed adoptions. Permanency planning has evolved beyond these parameters with options such as kinship care, customary care, guardianship care, custom adoption, and open adoption. This more expansive permanency continuum needs to be further explored in this province to provide consistency, and offer permanence for children.

As well, the Ministry could and should access the expertise and resources of current and former youth in care, the Federation of Saskatchewan Indian Nations, the Métis Nation–Saskatchewan, my Office, and other relevant sources to develop and implement a plan that would focus on creating a safe and nurturing foster care system dedicated to promoting the best interests of children in care.

The foster home overcrowding issue, then, is merely a result of a much larger problem within the entire child welfare system or structure, which is itself teetering on in ‘crisis mode,’ and in any individual child’s case, may be on the verge of catastrophic collapse at any time. This conclusion is based upon all of the historical and recent experiences of my Office through our various operational functions — which include advocacy (both individual and systemic), investigations (child death, critical injury, fairness and systemic program and service investigations), public education and youth engagement.

In this context, the Ministry of Social Services has failed to approach the continuum of services in the child welfare system with a comprehensive analysis, as it relates to permanency and positive outcomes for children and youth. There are far too many weaknesses and gaps in the continuum that creates ‘winners and losers,’ and we do not have the richness of options that would yield more collaborative and consensus-based outcomes for children.

More specifically, the following elements are missing:

- A well-articulated vision for child welfare in this province that is grounded in evidence-based best practices.
- A child-centred vision that drives the development of child welfare legislation, policy and practice.
- A statement that ‘the best interests of the child’ is the paramount consideration in *The Child and Family Services Act*.
- Prevention, early intervention and differential response programs — this is compounded by on-reserve and off-reserve funding disparities and jurisdictional tensions.
- A well-considered approach to kinship or alternative care in those circumstances where a child has to be removed from the care of biological family members, which would ensure the provision of reasonable compensation to alternative caregivers and appropriate governmental oversight.
- Guidelines or clear statutory criteria that indicate when the option to designate ‘Persons of Sufficient Interest’ should be chosen over others.
- A comprehensive mechanism for appropriate cases to be diverted out of the court process for alternative dispute resolution with sufficiently trained mediators and culturally competent processes in place.

- A framework that supports youth participation in case planning and in other significant decisions that impact upon the well-being of children.
- A legislative scheme in *The Child and Family Services Act* that, like most other jurisdictions, guarantees access to the Children's Advocate Office or to legal representation in child welfare court proceedings, thereby affording to children their fundamental rights and avoiding inordinate court delay.
- Legislated recognition that children and youth have a different sense of time than adults and that shorter cumulative maximum time periods for children in care need to be established, based upon age delineation.
- Proper supports and resources for children in care and an adequate continuum of 'in care' residential resources, such as group homes and other licensed or accredited residential facilities, which would ensure that quality assurance safeguards are in place.
- A set limit for the maximum number of children placed in foster care prescribed by legislation or regulation.
- A sufficient discharge or exit strategy for children to leave care — for example, permanent wards are not being registered or placed for adoption sometimes two to three years after the fact, and there is no legislated ability to have adoption with contact (openness in adoption). This, in turn, leads to polarized positions and conflicts, with little room for negotiation outside of the court process and for settlement within the court process.
- Ministry information management systems to adequately manage family, education and health histories of children in care, track the placement and case planning information of children in care, and report and measure accountability on the provision of services to children in care.
- An emphasis not only on foster parent recruitment, but also on the problem of retention — unless the Ministry of Social Services commits to a *Children and Youth First* service philosophy, as urged repeatedly by my Office, the negative word-of-mouth stories will continue and the new recruits will leave almost as quickly as they are found.

1.7 Building a Solid Foundation

The Ministry of Social Services and the government of Saskatchewan must make children a priority and establish a clear children's agenda on which a stronger and more stable child welfare system can be built. The children of Saskatchewan are our most precious human resources; yet little has been done to make this a daily reality. In my view, the answer to the unacceptable, prolonged and ongoing overcrowding predicament that has developed lies in looking at the problem from the viewpoint of the children — rather than from the perspective of the adults — and in placing their interests first.

From formulating and advancing the *Children and Youth First* Principles in May 2007, and calling for them to be implemented by the provincial government in order to "integrate and enhance a "child and youth-centred focus within all aspects of service provision," my Office initiated discussions with the Province of Saskatchewan's child serving ministries to incorporate these Principles into both proposed and existing legislation, policy, programming and practice applicable to children and youth in receipt of government services. In July of 2007, the Office proposed to the previous Provincial Government a *Children and Youth First* Action Plan for Saskatchewan. The need for such an Action Plan was also introduced through initial correspondence to the new Provincial Government in late 2007, and it is understood by my Office that the current government has taken the Principles under consideration and will be informing the Office of its future intentions.

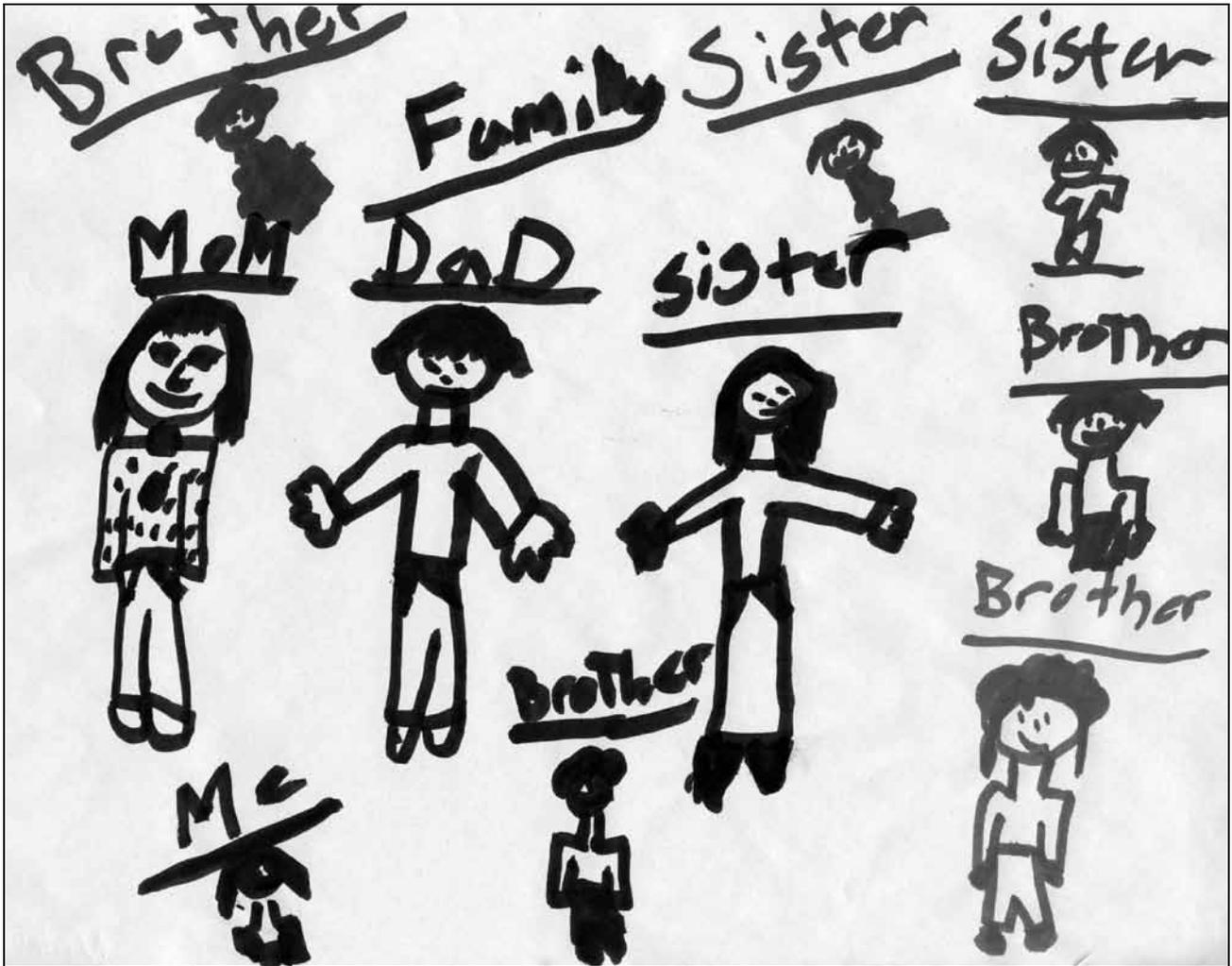
Unfortunately, there has been far too much drift and delay regarding the endorsement and implementation of these *Children and Youth First* Principles without very much communication and dialogue occurring with my Office. This inertia and lack of follow-through is puzzling to the Office and underscores the need to incorporate the *Children and Youth First* Principles into Government legislation, policy and practice.

Let us not shield ourselves from the obvious truth that there is a fundamental problem in the family-centred service philosophy at work in this province. How many more children will have to die, be injured or languish in care and have their inalienable rights trampled on before the leaders of Saskatchewan stand up and say, ***“you do matter—not one more day will go by without the Government of Saskatchewan integrating and enhancing a child and youth centered focus within all aspects of provincial legislation and services.”***

1.8 Now is the Time

Perhaps we are a privileged few at the Children’s Advocate Office. We get to look at these complex and often overwhelming systemic problems from the view of children everyday and through their eyes the solutions seem so simple. Be helpful. Be honest. Be fair. Be clear. Be careful. Children are the most vulnerable of human beings and those children, who are either victimized by their family of origin or experiencing temporary parental difficulties, and brought into provincial care, are the most fragile of all our children. They require more attention, more resources and more respect if they are to heal from their pain, cope with their continuing circumstances, achieve success in everyday efforts, and contribute positively as indispensable members of our society.

The status quo is simply unacceptable. Change must occur and it must occur now. The children of Saskatchewan who are in overcrowded foster homes have a right to a standard of care that guarantees an environment where their safety, well-being and individual development can flourish. They cannot wait any longer. It is my sincere hope that the recommendations that are contained in this report will serve as a blueprint for the Ministry of Social Services and the provincial government, so that the underlying problems can be corrected as quickly and as efficiently as possible. This time, mere promises to do better will not be enough. The breach of trust committed by the Ministry of Social Services to the children in its care must be permanently restored.



John, a 10-year-old interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture of his foster family.

2 Issue

In July 2005, the Saskatchewan Children's Advocate Office (CAO) began to receive complaints from concerned children, youth, foster parents, professionals and citizens that many children in the care of the Minister of Community Resources were being placed in overcrowded foster homes in the Saskatoon Service Centre area.³ The concern was that the actions of the then Department of Community Resources and now Ministry of Social Services,⁴ was compromising children's safety. Issues of supervision and incidents of abuse or violence were raised.

The Children's Advocate responded to these concerns and commenced advocacy initiatives by advising the then, Department of Community Resources of the alleged concerns in order to compel government to take action. The Children's Advocate was advised by the Department, at the regional level, that the situation was temporary and that both short and medium-term plans were in place to address the foster home overcrowding issue.⁵

In subsequent months, the Children's Advocate did not observe improvement to the foster home overcrowding situation in Saskatoon and raised the issue with the then, Deputy Minister of Community Resources in March of 2006. Concerns were expressed about the increasing number of overcrowded foster homes, as well as the high number of children being placed in them.

Particular concern was expressed regarding the safety of children living in two foster homes where 17 children had been placed. The Children's Advocate subsequently received information that there were four additional children in one of these homes, who were deemed as being in the care of persons having a sufficient interest.⁶ In total there were 21 children living in the foster home. The Children's Advocate requested that remedial action be taken immediately in both cases.⁷

In April 2006, the then Deputy Minister indicated to the Children's Advocate that he was satisfied that the needs and interests of the children placed in these two foster homes were being met within the circumstances.⁸ Further, the Deputy Minister advised that a plan had been developed to address the numbers of children placed in each of the overcrowded foster homes, including a review of all placement plans to ensure that the individual needs of the children were being met.

Concurrently, on April 3, 2006, the issue of foster home overcrowding was discussed in the Saskatchewan Legislature. A Saskatchewan Party Member of the Legislative Assembly (MLA) inquired of the Minister of Community Resources, whether he could, "[T]ell this house whether foster homes continue to exceed acceptable limits?"⁹ The Minister responded that,

[I] can confirm, yes, there is overcrowding.... But yes, there's a lot of action on this part of the House to make sure that we address that, and very quick action.... We're working very closely with the foster family association to try and find as many foster homes as possible so that the overcrowding problem does not exist.¹⁰

³ The Saskatoon Service Centre is one of three such divisions in the Centre Region of the Ministry of Social Services.

⁴ Since 1998, the provincial government department providing child welfare services, has gone by the following names: Department of Social Services, Department of Community Resources and Employment, Department of Community Resources, and currently the Ministry of Social Services. For the purpose of this report, this department shall be referred to as the Department of Community Resources or the Ministry of Social Services depending on the date of correspondence or event described.

⁵ Letter from Andy Field, Area Service Manager, Resources and Youth, Community Resources and Employment, to John Brand, Director of Advocacy Services, Children's Advocate Office (13 October 2005).

⁶ A Person Having a Sufficient Interest in a Child is recognized under two sections of *The Child and Family Services Act*. Section 23 provides that "A person designated pursuant to subsection (1) as a person having a sufficient interest in a child is a party to a protection hearing respecting the child." Only a person defined under subsection (1) may be so designated. These include: extended family, the chief of a Band or designate where a child is a status Indian, "any other person who is not a parent of the child but who, in the opinion of the court, has a close connection with a child". Where the court finds a child in need of protection, Section 37(1)(b) allows the court to make an order that the child "be placed in the custody of a person having a sufficient interest in the child." Under this section, the child is not in the custody of the Minister by order or agreement and does not have a legal status with the department. The Person Having a Sufficient Interest is granted a form of custody; however, their rights and responsibilities as guardian have not been fully defined within the Act.

⁷ Letter from Marvin Bernstein, Children's Advocate, to Wynne Young, Deputy Minister, Department of Community Resources (28 March 2006).

⁸ Letter from Duncan Fisher, Deputy Minister, Community Resources, to Marvin Bernstein, Children's Advocate (11 April 2006).

⁹ Legislative Assembly, *Saskatchewan Hansard*, No. 33A (3 April 2006) at 942 (Mr. Ted Merriman).

¹⁰ *Ibid.* at 942 (Hon. Buckley Belanger).

The MLA further questioned the practice of emergency foster homes used for long-term stays and whether the Ministry was truly consulting with the Saskatchewan Foster Families Association. The Minister of Community Resources responded that, “[T]here probably is a challenge in terms of having foster children stay in homes much longer than the intended time frame...” He also stated, “We’re working alongside of the association...”¹¹

On November 20, 2006, the same Saskatchewan Party MLA raised the foster home overcrowding issue in the Saskatchewan Legislature once again when he concluded that, “[T]he NDP government has allowed the problems with overcrowding in many homes. This government has admitted that 10 percent of all houses are overcrowded.”¹²

Throughout early 2007, the foster home overcrowding issue persisted and reports to the Children’s Advocate Office by children, foster parents and professionals continued regarding ongoing concerns. These included:

- Inappropriate placement of children in care of the Saskatoon Service Centre.
- Chronic overcrowding of the current foster home system.
- Placing children and foster parents in potentially dangerous situations.
- Lack of adequate case management.
- Lack of resources to meet the needs of children and youth.
- Lack of discharge planning.
- Inappropriate matching.
- The overcrowding situation is unmanageable.

Based on these concerns and a perceived lack of resources, capacity and ability within the Saskatoon Service Center of the Department of Community Resources to manage foster home overcrowding in Saskatoon, a decision was made by the Children’s Advocate Office to launch an investigation into the issue.

¹¹ *Ibid.*

¹² Legislative Assembly, *Saskatchewan Hansard*, No. 15A (20 November 2006) at 464 (Mr. Ted Merriman).

3 Investigation

3.1 Focus

The Children's Advocate gave notice of his intention to investigate foster home overcrowding in Saskatoon to the Deputy Minister of Community Resources pursuant to Sections 12.6(2)(b) and 20(1) of *The Ombudsman and Children's Advocate Act* on April 23, 2007.¹³ The notice of investigation identified that the Children's Advocate Office would be investigating:

- The current status of placement resources compared to the number of children in care.
- If children were being placed in appropriate placements.

In order to assess the concerns regarding overcrowding, the CAO investigation team developed a plan which focused on the following:

- The number of children in overcrowded foster homes in the Saskatoon Service Centre.
- The placement process including placement selection.
- Environmental and personal safety risks to children placed in overcrowded foster homes.
- Ministry of Community Resources policy and practice respecting overcrowding of foster homes.
- The actions undertaken by the Ministry of Community Resources to manage the overcrowding situation.
- Inter-jurisdictional legislative and policy comparisons.
- Current best practices in the child welfare field respecting overcrowding of foster homes.

Additionally, as CAO investigators conducted their work, emerging issues and concerns arose that required the Children's Advocate Office to expand the scope of the investigation to include related fact-finding and analysis.

3.2 Team

The Children's Advocate team that produced this report into foster home overcrowding in the Saskatoon Service Centre included:

- Marvin Bernstein, Children's Advocate
- Marcel St.Onge and Vanesa Vanstone, Lead Investigators
- John Brand, Investigator and Advisor
- Chandra LePoudre, Researcher
- Laura Beard, Editor and Graphic Designer
- Jennifer Kovar, Sandi Elliott, Penny Fairburn and Caroline Sookocheff, Administrative Support

This team was supported and advised by the staff of the Children's Advocate Office.

3.3 Process

The facts, analysis, findings and recommendations of this report are based on the following investigative actions taken by the Children's Advocate Office:

- **Policy Analysis:** a review and analysis of policy and procedures in the Saskatchewan Ministry of Social Services' *Family-Centred Services Policy and Procedures Manual* and the *Children's Services Policy and Procedures Manual*, April 2008 edition.

¹³ *The Ombudsman and Children's Advocate Act*, R.S.S. 1978, c.O-4, s.12.6(2)(b) and s.20(1).

- **Legislative Analysis:** a review and analysis of applicable Saskatchewan legislation, specifically *The Residential Services Act* and *The Child and Family Services Act*.
- **Policy, Legislative and Best Practices Analysis in Other Jurisdictions:** a review and analysis of other jurisdictions' applicable policy, legislation and best practices both nationally and internationally. This included telephone interviews with advocacy staff, foster family associations and social services representatives of four provincial jurisdictions in Canada.
- **Rights Analysis:** an analysis pursuant to children's rights under the United Nations *Convention on the Rights of the Child*.
- **Requisitioned Information:** request and review of information requisitioned from the Ministry of Social Services.
- **File Audit:** criteria specific file audit of 38 per cent of the total number of foster homes that exceeded the maximum number of placements pursuant to section 4.4.7 of the Ministry of Social Services' *Children's Services Policy and Procedures Manual*. CAO investigators audited a total of 13 case files.
- **Foster Home Visits:** home visits to a random sample of 13 per cent of the total number of foster homes that exceeded the maximum number of placements pursuant to 4.4.7 of the Ministry of Social Services' *Children's Services Policy and Procedures Manual*. CAO investigators visited a total of 10 foster homes.
- **Interviews:** in-person interviews of all able children (30) and foster parents and support persons (19) present in foster homes visited. The Children's Advocate Office also conducted interviews with community persons, professionals, as well as identified agencies, organizations and stakeholders that were believed to be in possession of information that would assist in the investigation. Ministry of Social Services staff involved in decision making and the delivery of children services and foster care in the Centre Region were also interviewed.

3.4 Confidentiality and Reporting Obligations

During the course of this investigation, several foster parents and Ministry staff members expressed concern regarding potential retaliation by the Ministry of Social Services were they to speak with CAO investigators. As legislated by *The Ombudsman and Children's Advocate Act*, the Children's Advocate and every member of his staff maintain confidentiality in respect of all matters that come to his or her knowledge in the performance of duties or the exercise of powers pursuant to the Act, and shall not disclose any matter except as provided in the Act. Any report the Children's Advocate makes pursuant to this Act shall not disclose the name of or any identifying information about any child involved in an investigation, any parent or guardian of the child or any complainant, except where, in the Children's Advocate's opinion, the interests of the public, any department or agency of the government or any person clearly outweigh any invasion of privacy that could result from the disclosure. All names of children and foster parents quoted in this report have been changed to protect their privacy.

As legislated by *The Child and Family Services Act*, just as any member of the public, the Children's Advocate and his staff have a duty to report to an officer or peace officer if he or she has reasonable grounds to believe that a child is in need of protection. In each of the historical cases cited in this report, CAO investigators determined that the Ministry was aware of the incidents and had taken previous actions to address these situations. The Children's Advocate Office did notify the Ministry of Social Services when CAO investigators found an ongoing concern with children placed in one overcrowded foster home. Subsequently, the Ministry of Social Services informed the Children's Advocate that this home had been closed and the children placed there had been moved.

4 Background

4.1 Saskatchewan's Foster Care System

The primary responsibility for the well-being of children in Canada rests with their parents. It has been accepted, however, that there are times when the State must intervene or parents may voluntarily agree to place their children in foster care due to temporary circumstances that prevent short-term parental care. Protective intervention occurs in response to child maltreatment or when a child is at risk of harm. In Saskatchewan, *The Child and Family Services Act*¹⁴ provides the legislative framework and legal definitions governing these determinations, as well as the services that are to be provided. The Act provides the provincial government with the authority to protect children and provide appropriate services in response to the child protection concerns.

One of the options available in response to a child being found in need of protection is to remove them from their parental home and place them into the care of the Minister. Children in care are subsequently placed in out-of-home care resources until a final determination is made respecting a return to their family home, or an alternative permanent plan can be put into place, which may include placement with extended family, foster care or adoption.

The Ministry of Social Services' *Children's Services Policy and Procedures Manual* defines "out-of-home care" as a continuum of placement resources including placement with extended family, residential treatment and approved foster homes.¹⁵ *The Child and Family Services Act* defines "foster care services" as the provision of residential services to a child by and in the home of a person who is:

- Approved by a director to care for the child.
- Not the child's parent or person with whom the child has been placed for adoption.¹⁶

Section 55 of *The Child and Family Services Act* outlines the Minister's responsibility for the expense of sheltering, supporting, educating and providing counseling and rehabilitative services when a child is in the care of the Minister.¹⁷ *The Children's Services Policy and Procedures Manual* further describes that the Ministry of Social Services is responsible for ensuring that the child's basic, developmental and special needs are met. The responsibility includes not only meeting the child's immediate needs, but also planning for the child's future.¹⁸

The Ministry has determined that a family environment is the most beneficial and desirable for children in its care. Accordingly, the foster care program has been developed so as to provide the child with a family environment to facilitate child development.¹⁹ A continuum of care in the foster home system has been operationalized through the development and support of four different types of foster care homes. They are as follows:

- **Emergency foster home:** provides immediate care to children on short notice at any time of day or night. Children are sometimes in poor health or physical condition, and receive care for up to two weeks.
- **Short-term foster home:** provides care and prepares children for transition to their families, to extended family, or to another permanent home.
- **Long-term foster home:** provides care to children until they are ready for independent living.

¹⁴ *The Child and Family Services Act*, S.S. 1989-90, c. C-7.2 [CFSA].

¹⁵ Saskatchewan, Ministry of Social Services, *Children's Services Policy and Procedures Manual* (November 2001) at s.4.47.

¹⁶ *Supra* note 14 at s.2(1)(j).

¹⁷ *Ibid.* at s.55(1)(a).

¹⁸ *Supra* note 15.

¹⁹ *Ibid.* at s.4.4.

- **Therapeutic foster home:** provides care to children with significant behavioral, social, developmental, and/or emotional problems. Some children may also have special educational needs. This is a specialized area of care that requires intensive training, skill and abilities.²⁰ Due to the high needs of the children referred to the therapeutic foster care program, the number of children placed in a home is restricted to two, and many homes are limited to one child.²¹

Each type of foster home traditionally has had a defined role to play in the provision of services for children, depending on whether the child was recently apprehended and in need of an emergency placement for a short period of time, or subsequently in a longer-term or permanent arrangement should placement be required. Each placement decision is to be based upon the assessed needs of the child.

Foster parents come from all walks of life and each foster home is to be assessed to ensure that a minimum standard of care is provided to the children who are placed into a home. The *Children's Services Policy and Procedures Manual* describes the assessment process, which includes a home study that considers:

- The suitability of the applicant to care for children.
- Age, number and special needs of children that are appropriate for the foster family.
- Safety and suitability of space in the home and surroundings.

Each application must also include:

- A medical report certifying that there are no health or medical conditions that would inhibit an applicant's capacity to care for children.
- References which are assessed to demonstrate the suitability of each applicant.
- A completed criminal records check on each applicant and any other adult over the age of 18, including adult children living in the home.
- A search of the Ministry's Automated Client Index on each applicant and other residents in the home for a history of involvement with Child and Family Services.²²

Once approved to be foster parents, individuals must complete a standard training program, called PRIDE (Parent Resources for Information Development and Education), consisting of three phases:

- Orientation
- Pre-service Training [no children are to be placed until this phase is completed]
- Practitioner Training²³

Currently, there are no requirements for a foster home to be licensed in Saskatchewan.

4.2 Regulatory Framework Governing Foster Care

4.2.1 Policy and Legislation Respecting Intervention into the Lives of Families

Being a federal state, Canada, through its constitution, distributes its powers between the national authority (Canada) and the provincial or regional authorities. Sections 91 and 92, Part VI of *The Constitution Act, 1867*, distributes legislative powers between the Parliament of Canada and the legislatures of the provinces.²⁴ The head of power concerning child welfare matters has thus been captured under the heading of "property and civil rights" and "all matters of a local and private nature," which is enumerated under Section 92(13), the exclusive power of the provincial governments. There is no federal child welfare legislation.

As there is no single national focus to child protection, each province has developed its own legislation and policy to respond to the neglect, maltreatment and abuse of children. Each statute is based upon a province's particular view of whose interests are paramount (the child

²⁰ Saskatchewan, Ministry of Social Services, *Caring for Saskatchewan Children* [Pamphlet] (Regina: 2008).

²¹ *Supra* note 15 at s.4.5.

²² *Ibid.* at s.4.4.1.

²³ *Ibid.* at s.4.4.6.

²⁴ *The Constitution Act, 1867*, 30 & 31 Victoria, c. 3. (U.K.), s. 91 & s. 92.

or the parent's), the prevailing Supreme Court jurisprudence on the State's rights to intervene in family matters, and the evolution of children's rights. In Saskatchewan, *The Child and Family Services Act* sets out the legal foundation for intervening into the lives of families in order to protect children from harm, and to provide services for children who come into government care. The Ministry of Social Services then develops and implements policies to execute the purpose and objectives of the legislation.

4.2.2 Policy and Legislation Respecting Entitlements of Children in Receipt of Services

It is clear that the Ministry of Social Services has the legislated power to apprehend children and place them into the range of out-of-home resources that constitute State care. However, it is equally important that government, in placing children into out-of-home resources, develop and implement policies that direct social workers and assist caregivers in enhancing the well-being of children in the Minister's care.

Ministry of Social Services policy states that out-of-home care "must meet or exceed the **'best interest[s] of the child'** as defined in Section 4 of *The Child and Family Services Act*."²⁵ Courts and Ministry officials must take into account the following mandatory factors, when considering a child's best interests:

- (a) The quality of the relationship that the child has with any person who may have a close connection with the child.
- (b) The child's physical, mental and emotional level of development.
- (c) The child's emotional, cultural, physical, psychological and spiritual needs.
- (d) The home environment proposed to be provided to the child.
- (e) The plans for the care of the child of the person to whom it is proposed that the custody of the child be entrusted.
- (f) Where practicable, the child's wishes, having regard to the age and level of the child's development.
- (g) The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
- (h) The effect on the child of a delay in making a decision.

The Ministry of Social Services has a special parental obligation to 'at risk' children who are in need of protection or are in its care, that sets it apart from other government ministries. This obligation is not only entrenched in *The Child and Family Services Act*, but extends through common law and its own internal policy based on its legislated mandate.²⁶

The Supreme Court of Canada has, in a trilogy of British Columbia cases²⁷ dealing with the principle of vicarious or indirect ministry liability in respect of historical sexual and physical abuse, established some guidance when looking at the required standard of care of the parental ministry or child welfare agency:

The standard for direct negligence for those exercising control over a child in State care is a high one and is that of "**a prudent parent**" caring for the welfare of his or her child. This standard does not make the government (or a child welfare agency) a guarantor against all harm, but this standard does hold the [ministry or] agency responsible for harm sustained by children in foster care, if judged by standards of the day, it was reasonably foreseeable that the [ministry or] child welfare agency conduct would expose these children to the harm ultimately sustained. The [ministry or] agency is under an obligation to

²⁵ *Supra* note 15 at s.1.2.

²⁶ See *The Child and Family Services Act*, S.S. 1989-90, C. C-7.2, s.52 & 55 which imposes "all the rights and responsibilities of a parent" upon the Minister of Social Services in respect of any child in his/her care as a result of an apprehension or court order. In addition, s.17 authorizes an officer to apprehend a child in the community, who is believed, upon reasonable and probable grounds, 'to be in need of protection and at risk of incurring serious harm'. As well, at common law, there is a strict fiduciary duty of care owed by a guardian towards his/her ward.

²⁷ *K.L.B. v. British Columbia*, [2003] SCC 51; *E.D.G. v. Hammer*, [2003] SCC 52; and *M.B. v. British Columbia*, [2003] SCC 53.

implement proper procedures in order to screen prospective foster parents and to supervise homes with foster children effectively, so that any abusive acts can be quickly detected. The [ministry or] agency was required to conduct a proper assessment of any proposed foster parents and their ability to meet a foster child's needs; to discuss the acceptable limits of discipline with the foster parents; and to provide regular supervisory visits in foster homes, especially foster homes that were considered 'overplaced' and had a documented history of inappropriate behaviour.²⁸ [Emphasis added]

At common law, there is a strict fiduciary relationship and duty of care owed by a guardian, such as the Minister of Social Services, towards his or her ward. In this regard, Black's Law Dictionary defines a "fiduciary duty" as:

A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships — such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client — **require the highest duty of care.**²⁹ [Emphasis added]

With regard to the issue of this investigation, foster home overcrowding, it is important to be mindful of the following sections of *The Child and Family Services Act* as they relate to the legislative entitlements of children in foster care and the obligations of the Minister as parent.

Section 52(1) of the Act stipulates that the Minister of Social Services, "shall have all the rights and responsibilities of a parent" towards children in care under apprehended, temporary and long-term status.³⁰

Section 53 of the Act refers specifically to mandatory residential placement considerations, including foster care, having regard to a "best interests of the child" standard:

In any case where an officer is arranging residential services for a child or an order is to be made by the court... the officer or court shall, **having regard to the best interests of the child:**

- (a) consider the feasibility of placing the child with a member of the child's extended family; and
- (b) where practicable, attempt to maintain the child in an environment that is consistent with the child's cultural background.³¹ [Emphasis added]

Section 54 of the Act allows for the provision for child care responsibilities to be delegated to foster parents through the vehicle of a written foster care services agreement, with the responsibility for the quality of care remaining with the Minister.³²

²⁸ M. Bernstein, C. Regehr & K. Kanani, "Liability for Child Welfare Workers: Weighing the Risks" at 397, 398 in N. Bala et al, eds, *Canadian Child Welfare Law: Children, Families and the State*, Thomson, Educational Publishing (Toronto: 2004).

²⁹ *Black's Law Dictionary, Sixth Edition* (Minnesota: West Group, 1999).

³⁰ *Supra* note 14 at s.52.

³¹ *Supra* note 14 at s.53.

³² Section 54 of *The Child and Family Services Act* states that: (1) Where foster care services are provided pursuant to this Act, the director shall enter into a written agreement with the person providing those services setting out the duties and responsibilities of each party with respect to the care provided. (2) None of the rights or powers vested in the minister pursuant to this Act are impaired by any terms or conditions of an agreement made pursuant to subsection (1). (3) Every agreement made pursuant to subsection (1) is deemed to contain a provision reserving to the director the right to remove the child from the person providing foster care where, in the opinion of the director, the welfare of the child requires that removal.

The *Children's Services Policy and Procedures Manual* and the *Family-Centred Services Policy and Procedures Manual* govern the actions of Ministry personnel to provide a consistent approach across the province in fulfilling the Minister's responsibilities to children in care as per *The Child and Family Services Act*. The appropriate actions and practices of placement in out-of-home care are outlined in these manuals. Once it has been determined through a risk assessment that a child is in need of protection, at risk of incurring serious harm and no arrangements can be made to ensure the child's safety in the home, the decision may be made to remove the child from his or her parental home and place them in foster care.

4.2.3 Policy and Legislation Respecting Maximum Number of Children in a Foster Home

Ministry of Social Services policy states that "the maximum number of children that can be placed in a foster home at any given time is four."³³ The policy also describes a range of accepted circumstances where a foster home can exceed the maximum of four which includes the accommodation of:

- The placement of sibling groups.
- Placement of children in a home which they have lived in previously.
- Short-term emergency placements.
- Provision of short-term respite.³⁴

Approval to overcrowd a foster home based on the above noted exceptions may only be made by the Regional Director or designate (Program Manager or Service Centre Manager), and requires review and renewal every two weeks.³⁵

Standards

The number of children placed in a foster home is to be based on the assessed capacity of the foster home and the needs of the children. Each region and/or service centre must establish a system for tracking placements that is current at all times. The number of supervisors and workers responsible for placements should be limited, to ensure accuracy of placement information and consistency in placement decisions. Each region and/or office must designate a primary worker for each foster home. The worker shall be responsible for monitoring the standard of the home and assessing the impact of placements made in that home.

In consideration of exceeding four children, the foster home must be assessed from a total family systems perspective and not solely on the basis of the child(ren) proposed for placement.³⁶

Consideration of Age

Ministry of Social Services policy identifies that age is a significant factor to consider when placing children into overcrowded foster homes. When determining the number and ages of children in a foster home, the policy states that:

- If four pre-school children are in the home, no more than two may be under 24 months of age, or
- If no other pre-school children are in the home, three children under 30 months of age may be placed.³⁷

³³ *Supra* note 15 at s.4.4.7.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

4.3 Inter-jurisdictional Comparison

Information from the Ministry of Social Services and research into best practices and inter-jurisdictional comparisons respecting legislative and policy actions limiting the maximum number of children in foster homes, has highlighted that most of the Canadian provinces and territories have a limit to which a maximum number of children may be placed. Most jurisdictions have the ability to override their policies or legislation with the approval of an Executive Director or designate. Table 1 on page 19 demonstrates the current situation in Canada.

Similarly, research into the limitations on the number of children allowed in a foster home in the United States suggests that the range lies between four and eight children, but must include the caregivers' own children. Restrictions on the maximum number are also imposed in many states if foster children are very young or they have special needs. Some states also impose licensing requirements that limit or regulate the total number of children that can be in the care of a foster parent.³⁸

4.4 Rationale for the Existence of a Maximum Number of Children in a Foster Home Policy

The Children's Advocate Office canvassed available literature and experts respecting overcrowding of foster homes and risks to children and foster families. There proved to be a dearth of research which addressed the impact of overcrowding on children or their caregivers. A review of the literature prepared for The Task Force on Safeguards for Children and Youth in Foster and Group Home Care highlighted the "paucity of research on the topics of abuse and/or maltreatment of children and youth in foster and group home care, and safeguarding children and youth from such harm, despite having been identified as an issue in child welfare for two decades."³⁹

Communication with Peter Dudding, Executive Director of the Child Welfare League of Canada, also identified the fact that there was little research on the specific topic of the number of children to be placed in a foster home. In his communication with the Children's Advocate Office, Mr. Dudding further stated that an out-of-home placement expert with the Child Welfare League of America, Mr. Floyd Alwon, explained that standards for a maximum number are set by expert consensus.⁴⁰ This was confirmed by Professor Robert Twigg, who consulted with the Foster Family Based Treatment Association and advised that the maximum number of four or five was based on "best practices" with no research back up.⁴¹

One of the few studies that the Children's Advocate Office was able to review looked at the relationship between placement stability and the number of foster children in a home. The outcome of the study was that there was an association between the number of unrelated children in the home and re-placement. The evidence suggested the risk for placement breakdowns and movement into other foster resources increased 43 per cent if an unrelated child is placed in a home with one foster child and 101 per cent if five or more unrelated foster children are present.⁴²

In "Characteristics of Effective, Harm Free Environments for Children in Out-of-Home Care," caregiver management or assisting foster parents with managing burnout, which can lead to abuse, was noted as an important factor by Daly and Dowd. The child-to-adult ratio is highlighted as "one of the most important caregiver management issues. Exceeding a healthy ratio can lead to caregiver burnout."⁴³ The article states that "child-to-adult ratios are an even more crucial variable when children are seriously disturbed."⁴⁴

³⁸ National Resource Center for Family-Centered Practice and Permanency Planning, "Limitations on Number of Children in a Foster Home" (2007) The Hunter College School of Social Work.

³⁹ Lannon and Associates, "Safeguarding Children and Youth From Abuse in Foster Care, A Review of the Literature, Draft 2, July 22, 1997" at 1.

⁴⁰ Electronic mail correspondence between Peter Dudding, Executive Director of the Child Welfare League of Canada, and Marcel St.Onge, Investigator, Children's Advocate Office (23 June 2008).

⁴¹ Electronic mail correspondence between Robert Twigg, Associate Professor, University of Regina, Faculty of Social Work, and Marcel St.Onge, Investigator, Children's Advocate Office (9 July 2008).

⁴² Mark Testa, Martin Nieto & Tamara Fuller, "Placement Stability and Number of Children in Home" (2007) Children and Family Research Centre, School of Social Work, University of Illinois at Urbana-Champaign at 2.

⁴³ Daniel L. Daly & Thomas P. Dowd. "Characteristics of Effective, Harm-Free Environments for Children in Out-of-Home Care" (1992) LXXI (6) Child Welfare at 487-496.

⁴⁴ *Ibid.*

Table 1: Inter-jurisdictional Comparison Foster Home Placement Limits

Jurisdiction	Maximum Number of Placements	Maximum Number Legislated	Maximum Number Allowed in Policy	Exceptions to Policy Allowed	Licensing Requirement
British Columbia	Yes	No	<ul style="list-style-type: none"> ▪ 6 including the caregivers own children ▪ No more than 2 are to be under the age of 2 	<ul style="list-style-type: none"> ▪ To accommodate sibling groups ▪ A past placement history ▪ Youth in care who have children ▪ Short-term emergency ▪ Short-term respite ▪ To accommodate sibling groups 	No
Alberta	Yes	As per licensing restrictions	<ul style="list-style-type: none"> ▪ 2 in level 1 foster home ▪ 4 in level 2 foster home 	<ul style="list-style-type: none"> ▪ A past placement history ▪ Current or adequate supports are available to meet the child's needs, but cannot exceed licensed capacity 	Yes
Saskatchewan	Yes	No	<ul style="list-style-type: none"> ▪ 4 in regular foster homes ▪ 2 in therapeutic homes 	<ul style="list-style-type: none"> ▪ Accommodation of sibling groups ▪ A past placement history ▪ Short-term placements ▪ Short-term respite 	No
Manitoba	Yes	No	<ul style="list-style-type: none"> ▪ As per licensing restrictions ▪ 4 is the maximum 	<ul style="list-style-type: none"> ▪ Only for 1 sibling group 	Yes
Ontario	Yes	As per licensing restrictions	<ul style="list-style-type: none"> ▪ No more than 4 foster children ▪ No more than 2 under the age of 2 	<ul style="list-style-type: none"> ▪ To accommodate sibling groups or if related to the foster parent 	Yes
Quebec	N/A	N/A	N/A	N/A	N/A
New Brunswick	Yes		<ul style="list-style-type: none"> ▪ 5 but must not exceed 7 dependants (including natural children and frail elderly family members) ▪ 2 in therapeutic homes ▪ 4 ▪ Not more than 2 infants under 2 	<ul style="list-style-type: none"> ▪ Accommodation of sibling groups ▪ Due to lack of resources up to 4 in a therapeutic foster home 	No
Nova Scotia	Yes	No	<ul style="list-style-type: none"> ▪ Not more than 2 infants under 2 	<ul style="list-style-type: none"> Yes 	No
Prince Edward Island	No	No	No	No	No
Newfoundland and Labrador	Yes	No	2	No	No
Northwest Territories	No	No	No	N/A	No
Yukon	Yes	No	<ul style="list-style-type: none"> ▪ 4 ▪ Not more than 2 under 18 months 		No

Placement stability and quality foster care have proven to be effective variables in positive outcomes for children as they become adults. Several studies have established a relationship between placement difficulties as predictive of transitioning difficulties into adulthood as well as higher rates of mental and physical disorders.⁴⁵ The findings are further supported by the final report, "Looking After Children in Canada," where the authors concluded that "to protect children from abuse and neglect is not sufficient intervention if we do not attend to their developmental needs."⁴⁶ "It is clear that the implementation of the Looking After Children model is a positive step."⁴⁷

As part of its mission, the Child Welfare League of America, an association of over 800 public and non-profit agencies, works to set standards defining and promoting practice excellence and has published best practices regarding child maltreatment in foster care. The League has recommended that agencies carefully attend to the following:

- Strictly avoid overcrowding of foster homes, which increases the possibility of maltreatment or other negative incidents.
- The combination of children placed in a foster home. Caution should be taken when placing children or adolescents who may pose a risk to other more vulnerable children.
- Children with extreme health or mental health needs that require high levels of care and supervision. Only the most experienced and well-trained foster parents can provide such care.
- The strict avoidance of placement with foster parents who have not developed the necessary competencies to care for children with complex needs. These situations can overwhelm foster parents and children and increase the risk of actual maltreatment, false allegations, and other negative outcomes for the child, the foster family, and other children in the home.
- Placements that cannot meet a child's needs or that subject a child to unnecessary stress greatly increase both the trauma for the child and the likelihood of placement disruption.⁴⁸

The Council on Accreditation (COA) partners with human service organizations worldwide to improve service delivery outcomes by developing, applying, and promoting accreditation standards. One of the areas that the COA has developed standards of excellence for is foster care services, including child placement standards, which include that:

The home environment is considered when identifying a family for the child, and the foster home has no more than:

- a) five children with no more than two children under the age of two; or
- b) two children with therapeutic needs.⁴⁹

Environmental factors can include sleeping arrangements as well as characteristics and needs of other children in the home. The total number of children includes all children under the age of 18 residing in the family's home and should not exceed four in therapeutic foster homes. Exceptions may be made to the number of children in the home to accommodate sibling groups, or when the home is licensed by the State or tribe to care for more children and demonstrates that the needs of every child can be met.⁵⁰

The foster care system is predicated upon providing care to children whose assessed behaviours or special needs identify care in a home-like setting, which attends to the specific needs of the children, to be an appropriate placement.⁵¹ As noted above, best practices and standards have been developed and placed into policy or legislation to enforce a minimum standard of care that would meet the best interests of children.

⁴⁵ E. Keller, T. Cusick, R. Gretchen & M.E. Courtney, "Approaching the transition to adulthood: Distinctive profiles of adolescents aging out of the child welfare system" (2007) 81(3) *Social Services Review* at 454-484. See also Ronald C. Kessler, et al, "Effects of Enhanced Foster Care on the Long-Term Physical and Mental Health of Foster Care Alumni" (2008) 65(6) *Archives of General Psychiatry* at 625-633.

⁴⁶ Kathleen Kufeldt, Marie Sumard & Jacques Vachon, "Looking After Children in Canada: Final Report" (2000) at 64.

⁴⁷ *Ibid.* at 224.

⁴⁸ Child Welfare League of America, "Child Maltreatment in Foster Care" CWLA Best Practice Guidelines (2003) at 17.

⁴⁹ Council on Accreditation, Accreditation Standards, "Foster Care Services," FC 6.05, online: <<http://www.coaststandards.org/standards>>.

⁵⁰ *Ibid.*

⁵¹ *Supra* note 48.

5 Facts

5.1 Children in the Care of the Minister

5.1.1 Total Number in Care

As of July 2008, the Ministry of Social Services reported that there were 216 active foster homes in the Saskatoon Service Centre area. The number of foster children that were in out-of-home placements at that time was 1,067, which represented 35 per cent of all out-of-home placements in the province.⁵² The only other region that came close to those numbers was the Regina Service Centre area, which at the time had 777 out-of-home placements or 25 per cent of the provincial total.

If these numbers of active foster homes and total children placed in foster homes in the Saskatoon Service area were averaged, there would be 4.9 children in foster care for every active foster home at that time.

Historically, between January 2004 and July 2008, the total number of foster children in the Saskatoon Service Centre grew from 670 to 1,067. This is a 159 per cent increase in just four years.

These statistics and those that follow do not include the number of foster homes approved by, or numbers of children in the care of First Nations' child and family services agencies in Saskatoon and surrounding area.

5.1.2 Total Number in Overcrowded Foster Homes

Ministry of Social Services policy defines the standard for the maximum number of children in a foster home as four, depending on the assessed capabilities of the foster home and the needs of the children.⁵³ Foster homes may be designated as "therapeutic," in which case "the number of children placed in a home is restricted to two, and in many homes are limited to one child."⁵⁴

The Children's Advocate Office found the following statistical information from data accessed through the Ministry of Social Services' ACI Systems on June 25, 2008.

Table 2: Maximum Number of Placements Available vs. Number Placed

Type of Foster Home	Number of Overcrowded Homes	Maximum Number of Placements	Number of Children Placed	Per Cent of Capacity
Therapeutic	12	24*	99	411%
Non	22	88	162	184%
Totals	34	112	259	231%

* This number assumes that the maximum of two children may be placed in these homes.

⁵² Telephone Communication with Eva Carpenter, Senior Program Consultant, Foster Care, Ministry of Social Services, and the Children's Advocate Office (21 August 2008).

⁵³ *Supra* note 15 at s.4.4.7.

⁵⁴ *Ibid.* at s.4.5.

An average of 7.6 children were in foster care in each of these homes; however, CAO investigators found that the number of children placed in each of the overcrowded non-therapeutic foster homes at the time of the investigation ranged from five to as high as 15, and in therapeutic foster homes from five to as high as 13.⁵⁵

5.1.3 Demographics

Of the 259 children residing in overcrowded foster homes on June 25, 2008, the average age was nine and the average age they first became involved in Family Services was one. The average age they became children in care was four. The average length these children had spent time on apprehended status with the Ministry of Social Services was 170 days, with the range being from one to 846 days.

Table 3: Children in Overcrowded Foster Homes in the Saskatoon Service Centre by Status

Type of Status	Number of Children	Per Cent
Apprehended	67	25.9%
Temporary Ward	65	25.1%
Residential Agreement	29	11.2%
Long-term Ward	47	18.1%
Permanent Ward	50	19.3%
Information Missing	1	0.4%
Totals	259	100%

Table 4: Children in Overcrowded Foster Homes in the Saskatoon Service Centre by Age

Age	Number of Children	Per Cent
0-11 Months	6	2.3%
1-4 years	54	20.8%
5-8 years	61	23.6%
9-15 years	118	45.6%
16 years and over	20	7.7%
Totals	259	100%

Table 5: Children in Overcrowded Foster Homes in the Saskatoon Service Centre by Ancestry

Ancestry	Number of Children	Per Cent
Status Indian	162	62.5%
Non-Aboriginal	88	34.0%
Métis	7	2.7%
Non-Status Indian	2	0.8%
Totals	259	100%

⁵⁵ During the course of the investigation from April 2007 to October 2008, the highest number of placements reported in the Saskatoon Service Centre area was on November 26, 2007, in a foster home where there were 19 children placed.

5.2 Policy and Practice

5.2.1 Compliance with Ministry Policy on Maximum Number

Ministry of Social Services policy defines acceptable circumstances when a foster home can exceed the standard for the maximum number of four children placed in a foster home to include:

- The placement of sibling groups.
- Placement of children in a home which they have lived in previously.
- Short-term emergency placements.
- Provision of short-term respite.⁵⁶

However, no more than two “acceptable circumstances” can exist for one home and permission for exceeding the standard for the maximum number of children of four in a foster home requires approval of the Regional Director or designate (Program Manager or Service Centre Manager) with decision review and renewal every two weeks thereafter.⁵⁷

The Children’s Advocate Office review of the files of 13 of the 34 overcrowded foster homes in the Saskatoon Service Centre area found that there was no clear documentation identifying acceptable circumstances for homes to be in an overcrowded situation in any of the files. Unlike all other regions in the province, the documentation provided by the Ministry indicates that Centre Region of the Ministry of Social Services does not track the number of acceptable circumstances in each foster home. Of those 13 overcrowded foster homes reviewed, six had been designated as therapeutic homes, yet all were registered with the Ministry of Social Services as exceeding not only the maximum number of permissible placements for a therapeutic home, they also exceeded the maximum of four placements for any home. Furthermore, the Children’s Advocate Office was unable to find in any of the 13 overcrowded foster homes files reviewed, documentation of any approvals by the Regional Director or designate to exceed the maximum number of placements in any of these foster homes.

5.2.2 Compliance with Ministry Assessment of Foster Home Capabilities

According to Ministry of Social Services policy, each foster home undergoes an initial home study conducted by Ministry personnel. This study is conducted to assess:

- Suitability of the applicant to care for children.
- Age, number and special needs of children that are appropriate for the foster family.
- Safety and suitability of space in the home and surroundings.⁵⁸

If approved as a foster home, an Agreement for Foster Care Services, which includes the maximum number of children to be placed in the home based on the assessed capabilities, is signed by the foster parent(s) and the Ministry. The Agreement must be reviewed with the foster family annually. Both the Ministry and foster parents must ensure that the contractual obligations of the Agreement are met.⁵⁹

In each of the 13 overcrowded foster home files reviewed by the Children’s Advocate Office, not only was the Ministry policy on the maximum number of four children placed in any home exceeded, the assessed capacity of the foster home was also disregarded and the Agreement for Foster Care was contravened by the Ministry by placing more children than the maximum approved for each foster home.

⁵⁶ *Supra* note 15 at s.4.4.7.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* at s.4.4.1.

⁵⁹ *Ibid.* at s.4.4.5.

5.2.3 Compliance with Ministry Policy on Placement Matching Process

According to Ministry of Social Services policy, each placement in a foster home requires the assessment and documentation of the:

- Child's needs.
- Foster parent's abilities.
- Mix of children already in the foster home.
- Capacity of the home structure to safely accommodate an additional child.⁶⁰

Upon placement of a child in their care, "all relevant information shall be provided to the caregiver preceding or upon the child's placement in out-of-home care. Caseworkers may use the Caregiver Information Form to provide the caregiver with written information and/or copies of the investigation record, assessment and case plan, genograms and ecomaps..."⁶¹ The Centre Region has operationalized this provincial policy requirement by providing foster parents with a Placement/Support Unit Child Blue Book⁶² that has important information regarding the child's behavior, medical needs, family information, and caseworker's name and numbers. Providing this information at the time of placement is critical to ensure that the foster parents are aware of any essential information, including potential allergic reactions or follow-up medical care required, what family members may be in contact and what type of contact is permitted, and whether the child may pose a danger to themselves, other children or adults in the home.

During interviews with foster parents⁶³ and Ministry personnel,⁶⁴ the Children's Advocate Office found that one of the single most frequent and significant issues raised was that the required assessments and documentation were not being conducted at the time of placement in overcrowded foster homes. This issue is compounded by a lack of open communication from Ministry front-line staff to foster parents regarding the children placed in their homes and associated processes that leave foster parents feeling isolated, unsupported and not part of the "team" that the Ministry openly promotes in PRIDE training as being at the foundation of foster care for children.

In August 2007, Ministry staff reported to the then Minister of Community Resources that:

Workload demands mean that caseworkers are not able to provide for adequate information and case planning about children coming into foster homes. The result has been failure to provide medications, numerous placement breakdowns for children and the loss of the few resources available.⁶⁵

The Children's Advocate Office undertook further investigation of the reported lack of assessment and communication of information with a review of 68 Placement/Support Unit Child Blue Books that would or should have accompanied children to their new foster homes. The investigation revealed that 93 per cent of the Placement/Support Unit Child Blue Books were incomplete, blank or never received by the foster parent. Alternatively, none of the foster parents had received the provincially developed Caregiver Information Form; or an investigation record, assessment, case plan, genogram or ecomap at the time of placement.

Further to the lack of documented assessments and related information, 90 per cent of foster parents interviewed indicated that they believed Ministry personnel did not share and/or deliberately withheld vital information on a child's background and needs when placing them in their homes.

In one account given by a foster parent, two girls and a boy were placed in the home with no information communicated that the children had previously engaged in inappropriate sexual

⁶⁰ *Ibid.* at s.4.4.1.

⁶¹ *Ibid.* at s.2.2.4.

⁶² Depending on the age of the child in care, the "Blue Book" may be a different color such as yellow.

⁶³ Interview of foster parent(s), Saskatoon Service Centre, Ministry of Social Services, by CAO Investigators.

⁶⁴ Interview of Ministry staff member(s), Saskatoon Service Centre, Ministry of Social Services, by CAO Investigators.

⁶⁵ Saskatchewan Government Employees Union, *Workplace Concerns in the Department of Community Resources* (Regina: 2007) at 9.

behaviors. The foster parent found the two girls with their pants down and the little boy on top of them where he began “humping them.” When the foster parent informed the Ministry caseworker about this behavior, the worker stated, “I have been told this has happened before.” The foster parent relayed this historical event to the CAO investigators as an example of the Ministry providing inadequate information either verbally or written in the blue books given to the foster parent at the time of placement.⁶⁶ At the time of the investigation, these children were no longer in the foster home and the foster parent’s concerns had been addressed by Ministry staff.

One foster home file reviewed by CAO investigators contained an email between Ministry staff, which outlined the emergency placement of a 17-year-old girl into an overcrowded foster home. The foster parents were not provided the requisite yellow book or any other information warning of the girl’s sexualized, inappropriate and intrusive behavior. The girl was later found on a bed kissing with a 12-year-old developmentally-delayed girl. The email indicated that when this incident was reported to a Ministry caseworker, the foster parents were told to get the 17-year-old child a dildo. CAO investigators cross-referenced this 17-year-old girl’s file with her placement in a subsequent foster home. It was found that the same youth had been placed, once again with the full knowledge of Ministry staff, in a foster home where she would be sharing a room with another 12-year-old girl. The 17-year-old was discovered to have masturbated in front of that girl as well.

A foster parent advised the Children’s Advocate Office of another case where three children were placed in a foster home with no information communicated that the middle boy was sexually abusing the youngest girl in the group. The foster parent could not believe that the Ministry placed these three children together knowing the risk that they presented to each other. The foster parent promptly responded to ensure the children’s safety by asking the Ministry to remove the boy from her home to find a more suitable placement for him. This request was fulfilled by the Ministry.⁶⁷

This lack of communication from the Ministry to foster parents is not limited to histories of inappropriate behaviors. One foster parent, upon asking a Ministry caseworker if the child placed in her care had any medical concerns, was informed that the child did not. While comforting the child later that evening, the foster parent discovered that the child had a shunt in their head that required significant medical care. The foster parent immediately followed up by confronting the Ministry with its failure to advise them of the child’s medical needs. The foster parent independently sought to be fully apprised of information necessary to ensure this child’s medical safety. After the child had spent significant time in care, the foster parent received information from the Ministry about the child’s medical condition, including physical indicators of complications associated with a shunt that would require immediate medical intervention. The foster parent was concerned that the child had already spent significant time in her care by the time the Ministry forwarded this information.⁶⁸ The child was no longer at risk of medical neglect at the time of the interview because of the foster parent’s diligence to identify and intervene regarding the child’s medical needs.

Interviewed Ministry front-line staff were unanimous in their responses that, almost without exception, placement decisions in overcrowded foster homes were made based on the availability of a bed, and not on the assessed needs of the child or the capabilities and home environment of the foster parents.⁶⁹ As will be detailed later in this report, the availability of a bed is not even the minimum requirement for some placements to occur. In other instances, the CAO investigators were advised by interviewed foster parents that manipulative methods are used to “trick” or coerce foster parents into taking another child into their care. Foster parents reported intimidation and threats of withholding future funding or placements if they refuse the current request, or if they complain.⁷⁰

⁶⁶ *Supra* note 63.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Supra* note 64.

⁷⁰ *Supra* note 63.

In one incident, a foster parent reported that a Ministry caseworker had called them to ask if the family would take another child. The foster parent said no. The caseworker tracked down the foster parent's spouse and told them that the foster parent had said it was okay and up to the spouse to take another child. When the spouse arrived home from picking up the child, the other foster parent wondered why their spouse had agreed to take another child when they had said no.⁷¹

Another foster parent was aware of fellow foster homes where the foster parents refused a new placement. The foster parent commented, "If you piss them off, they'll move kids and they delay payment and cap the home. They are like parents who use their kids as weapons."⁷² Other foster parents indicated that they were hesitant to speak to CAO investigators for fear of retribution from Ministry staff.⁷³

A lack of proper assessment and the resulting inappropriate matching can cause placements to breakdown. In these instances, children pay a personal cost when they are forced to move to another foster home once again. The children do not know why they are moving, but they do know what it feels like and strongly recommend that unnecessary moves do not occur.⁷⁴ Unlike other jurisdictions in Canada, the Ministry of Social Services does not automatically track how many times a child is moved within the foster care system in Saskatchewan.

One foster child explained that he had been in three different foster homes and, in his current placement three times as well. He did not know why he had been moved, but would have rather stayed where he was and not be moved between foster homes.⁷⁵ Another female youth in care spoke of a young girl in her home, who was only three years of age and who had been to so many homes that she did not want to go in the car to the zoo because she was afraid that if she left the house that she might be moving.⁷⁶ These experiences were common amongst the children interviewed, suggesting that the Ministry moves children without providing them with adequate reasons or notice of the pending move.

When a child runs away from a foster home, they are exposed to serious safety concerns such as risks of abuse, violence or exploitation on the streets. Alternatively, if upon running away they return to the home they were apprehended from, they may be exposed to the same risks that were present when they were placed into care. Accordingly, it was important for CAO investigators to analyze the factors associated with running.

Children in care describe many reasons for running away. Researchers have suggested that these reasons may be classified as either "push" or "pull" factors. Push factors are those which drive youth to leave and are generally related to environmental factors in their placements; whereas pull factors are influences outside of their placements that draw a youth to leave in order to go to something or someone. Two significant environmental reasons for running are inappropriate placement and not receiving proper treatment.⁷⁷

The propensity of children to run from homes that were overcrowded was investigated by the Children's Advocate Office. Concerns were reported to the CAO investigators that the foster parents' ability to adequately supervise and intervene when the potential for violence occurred both against the child and/or the foster parent was impeded when the number of children increased. It was alleged that, in turn, these dynamics increased the likelihood of children running from foster placements.⁷⁸

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Interview of Foster Child(ren), Saskatoon Service Centre, Ministry of Social Services, by CAO Investigators.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Office of Child and Family Service Advocacy, *Youth Running From Residential Care: "The Push" and "The Pull"* (Ontario: February 2006) at 2.

⁷⁸ *Supra* note 64.

Furthermore, the Children's Advocate Office was advised by Ministry of Social Services personnel that children were on the street due to inappropriate placements resulting in placement breakdown. A Ministry caseworker interviewed by CAO investigators expressed concern that the Ministry often "reframed" this running behavior as being the child's "choice" and the child was, therefore, blamed for the inadequate resources to meet their placement needs.

The Children's Advocate Office's review of 13 overcrowded foster home files found two files where children were noted to be running from foster homes because of dynamics within the home that were attributed to overcrowding.

The first file involved a therapeutic foster home that was only supposed to have a maximum of two children placed at any given time according to Ministry policy. The following is an excerpt from a Ministry caseworker's documentation from that file.⁷⁹

I am aware Andy reported Sam was invading his personal space as one of the reasons he ran ... I want to express my ongoing concern that there are too many youth in this home and THERE IS inappropriate behaviour (both physical and sexual) happening, no matter what [the Foster Parent] says and no matter how hard she tries to supervise.⁸⁰

The second file relayed a number of accounts of multiple children running from one particular overcrowded foster home. The Ministry's file notes that multiple children ran from this home expressing concern regarding the foster parent yelling at the children, and engaging the assistance of other foster children to supervise, which was perceived as spying on the other children. The cumulative effect of the multiple children and increased stress appeared to be having an adverse impact on the foster parent's demeanor, treatment of the children and discipline choices. The following is an excerpt from a Ministry staff's documentation from that file.⁸¹

Raymond would also run from Sally's [the foster parent] because he did not like it at Sally's due to being yelled at often...I am concerned that Sally may not be able to handle the number and needs of the children in her home... Christopher ran from Sally's home...Christopher reported that other children in the home were spying on him as per Sally's directions....

I know that we have a resource shortage but feel strongly about the number of children that are sometimes in [the foster parents'] home....it has come to my attention that the home help is parenting the children, cooking, cleaning and performing the majority of interacting with the children....There is no way that [the foster parents] can appropriately address and deal with issues in this capacity. (ex. Talking and spending time with the children instead of spying and scolding, as [the other worker] had indicated...) I also feel that for the most part this is a strong home and given the circumstances, [the foster parents] are not able to keep up with the demands of the children in their home, and therefore have resorted to inappropriate methods of dealing with situations.⁸²

During the Children's Advocate Office interviews, two children who were no longer placed in this identified foster home, expressed concern about their treatment while placed there, and children running due to poor treatment.

Thirty per cent of foster parents interviewed identified that children ran from their home because of poor matching. One example provided by a foster parent indicated that a 10-year-old and

⁷⁹ All names have been changed to protect the privacy of the individuals involved.

⁸⁰ Review of Foster Home File, Saskatoon Service Area, Ministry of Social Services by CAO Investigators.

⁸¹ *Ibid.*

⁸² *Ibid.*

11-year-old ran away because they did not like the rules in the home and they were not matched to the 0-5 age category of her home. The Children's Advocate Office asked why two pre-teens were placed in a home that was assessed for preschoolers. The foster parent responded, "Good question, I had two beds?"⁸³

5.2.4 Compliance with Ministry Policy on Physical Accommodations

According to Section 4.4.3, Building/Health/Safety Requirements, of the Ministry of Social Services *Children's Services Policy and Procedures Manual*, "Each foster home will be assessed based on the *Residential Care Services: A Building, Health and Safety Guide*(1999)⁸⁴ and the assessment will be documented." The *Guide*, which is included as an appendix in the Manual, outlines specific building and space requirements in seven areas:

- Bedrooms
- Dining/living room space
- Kitchens
- Equipment
- Bathrooms
- Recreation or common areas
- General⁸⁵

If a foster home is unable to meet the requirements outlined in the *Guide*, Ministry policy requires that exceptions are to be approved by the Regional Director (no designate is identified).⁸⁶

Of the nine overcrowded foster homes that were visited by CAO investigators, 100 per cent failed to comply with the *Guide's* specifications in two or more areas. One other home, which had been designated as overcrowded previously, but was not at the time of the investigators' visit, would have been in non-compliance as well if the number of children previously placed there by the Ministry were present. The breakdown of concerns assessed by the CAO investigators included:

- 80 per cent did not comply with requirements for bathrooms.
- 70 per cent did not comply with requirements for bedrooms.
- 60 per cent did not comply with requirements for general safety provisions to ensure that the home environment could prevent and/or respond to emergency situations.
- 20 per cent did not comply with requirements for dining/living room space.
- 10 per cent did not comply with requirements for equipment.

The Children's Advocate Office found that these foster homes' failure to comply with the *Guide's* specifications was either directly attributable to the home being overcrowded, or Ministry of Social Services staff's lack of knowledge, communication and enforcement of the Ministry's own policy regarding the physical accommodation requirements for foster homes.

Interviewed Ministry staff were unaware of the Ministry of Social Services policy requirements to assess and ensure compliance with the specifications defined in the *Guide*. Furthermore, the Ministry's Regional Director advised that no requests had been submitted for an exemption to the specifications; therefore, as per Ministry policy, each of the nine foster homes that did not meet the requirements when visited by CAO investigators were expected to comply with the requirements of the *Guide*.

Foster parents interviewed during these home visits had not been advised by the Ministry regarding policy requirements for physical accommodations and were surprised by the CAO investigators' inquiries and interest in the particular areas as outlined in the *Guide*. When non-compliance was noted, the foster parents often advised that they were not aware of the respective

⁸³ *Supra* note 63.

⁸⁴ *Supra* note 15 at s.4.4.3.

⁸⁵ *Ibid.* at s.13.1.

⁸⁶ *Ibid.*

policy standard for that area. One foster parent felt quite taken aback when the Children's Advocate Office noted an area of non-compliance that had been deemed as appropriate one week earlier by a Ministry of Social Services caseworker. This particular infraction, in addition to other noted concerns such as latches on the outside of children's bedroom doors, contravened the *National Fire Code of Canada* in addition to the City of Saskatoon *Fire and Protective Service Bylaw 7990*, and was referred back to the Ministry for immediate remedy.

A Centre Region manager advised CAO investigators that he had conducted his own review of 12 overcrowded foster homes to assess the safety and adequacy of the physical accommodations.⁸⁷ The review of each home examined the presence of smoke detectors, fire extinguishers, adequate space and evacuation plans, but did not utilize an objective measuring tool during these inspections. The manager determined that approximately 80 per cent of the homes complied with safety requirements; however, he did not use the comprehensive and specific standards contained in the *Residential Care Services: A Building, Health and Safety Guide* to make this determination as required by Ministry of Social Services policy. The Children's Advocate Office has since been advised by a foster parent that after this deficient methodology was identified by CAO investigators, Ministry staff subsequently revisited her home and completed a review using the *Guide*.

Ministry personnel indicated that there are no licensing requirements outlined in legislation or regulations, and that foster homes are exempt from provincial legislation governing physical requirements for residential facilities. Rather than referring to Section 4.4.3, Building/Health/Safety Requirements, of the *Children's Services Policy and Procedures Manual*, CAO investigators were referred by Ministry staff to the Foster Home Safety Check List, which is included in the *Manual* and used to evaluate homes during the course of the initial home study and annual review. CAO investigators found significant gaps between what is to be assessed when using the Safety Check List and the application of standards contained in the *Residential Care Services: A Building, Health and Safety Guide*. The Safety Check List focuses on meeting standards for fire safety such as:

- Smoke detectors on each level.
- Posted evacuation plan.
- Room sizes meet standards.
- Safe storage of flammable materials.
- Furnaces and wood stoves/fireplaces inspected.⁸⁸

The Check List also indicates that general safety guidelines should be reviewed such as:

- Safe storage of:
 - Medication
 - Alcoholic beverages
 - Household cleaners
 - Garden supplies
 - Chemicals
 - Power tools
 - Fire arms/ammunition
- Bedroom size appropriate for ages and numbers of children.
- Crib – snug fitting mattress/slats close together.
- Sleeping arrangements appropriate for gender, age and special needs.
- Safe water source.⁸⁹

CAO investigators found, in interviews with foster parents and Ministry staff, that the Check List was used for the initial home study and the annual review of each home. Ministry of Social

⁸⁷ Interview of Centre Region Managers, Ministry of Social Services, by CAO Investigators.

⁸⁸ *Supra* note 15 at s.12.20.

⁸⁹ *Ibid.*

Services documentation on the foster family files failed to note whether at the time that additional children were being placed, if on-the-spot reviews of whether the foster homes would still meet the requirements for physical accommodations were being conducted. Furthermore, the brief content of the Check List and the review time taken to complete it, missed major standards that are included in the *Residential Care Services: Building, Health and Safety Reference Guide*. The CAO investigators finding that 100 per cent of the overcrowded foster homes visited failed to comply with the Guide's specifications in two or more areas, the Ministry's practice of using the Check List in its current form, as well as the lack of demonstrated knowledge of Ministry policy regarding the assessment of physical accommodations based on the *Guide*, indicates that the Ministry of Social Services was non-compliant in enforcing minimum standards for physical accommodations in overcrowded foster homes.

Of particular concern to the Children's Advocate Office was the finding that 70 per cent of the homes visited by CAO investigators did not have the physical capacity to meet the specifications for bedrooms in the *Guide* as defined by Ministry policy. Bedrooms were found to exceed the maximum of two occupants per room and the windows too small and out of the reach of the children or did not have screens on second story windows. Additionally, unapproved areas of some homes were being used for sleeping, including passageways and common areas.

As previously stated in this report, pressure to accept children into care by the Ministry personnel was identified as a major concern by some foster parents. Fifty per cent of the foster parents interviewed advised that they had felt pressured to take more children than they had beds for and had recently refused to take more children because they did not have a bed for them.

Foster parents reported that Ministry personnel encouraged them to use inappropriate sleeping arrangements, such as having children sleep on couches and floors or share a bed, in contravention of Ministry policy. One foster parent stated, "They've told me to just put them on the floor with a sleeping bag. I won't do that."⁹⁰

It was also reported by a foster parent that in one instance, where the CAO investigators observed that the maximum of two children per room was contravened, a developmentally-delayed eight-year-old boy was sexually assaulted by two nine-year-old boys. In the aftermath of this incident, the foster parents sought advice from Ministry personnel on what they could do to avoid a similar occurrence from happening again. Rather than address how the Ministry failed to assess and appropriately match the two offending boys with the home's capacities for supervision and physical accommodations, and/or what role the overcrowding in the room might have played in the incident, the foster parent reported that the Ministry caseworker responded that, "a certain amount of sexual abuse is to be expected in a foster home."⁹¹ While these children no longer presented risks to each other because of the foster parent's diligence to require the Ministry to remove two of the children, the Ministry's practice of overloading foster homes, to the extent that more children are sleeping in bedrooms than permitted in policy, fails to demonstrate due diligence as the legal parent of these children to ensure their physical, sexual, psychological and/or emotional safety.

5.2.5 Compliance with Ministry Policy on Serious Case Incidents

According to Ministry of Social Services policy, a "serious case incident" is defined as including, but not limited to:

- A death of a child.
- A serious injury of a child.
- Allegations of physical or sexual abuse of a child.⁹²

According to this policy, a written report must be submitted to the Executive Director within seven days of the incident that includes the:

⁹⁰ *Supra* note 63.

⁹¹ *Ibid.*

⁹² *Supra* note 15 at s.1.8.

- Date of the incident.
- Child information including name, birth date, legal status, program involvement and any previous incidents.
- Caregiver information including name, address, region and any previous incidents.
- Incident details including the type of incident, description of incident and follow-up by department.
- Child's status including medical/emotional needs, change of placement or police involvement.
- Caregiver's status including other children in the home, home closed or suspended, police involvement or medical/emotional needs.
- Comments and recommendations.⁹³

In all instances, the serious case incident report should state the reason for the review, the results of the review and the recommended actions or outcomes. Any child in care who could reasonably be expected to contribute to the assessment, based on age and developmental capacity, should be interviewed.⁹⁴ The Children's Advocate Office requisitioned information from the Ministry of Social Services on the number of serious case incidents reported in all foster homes in the Saskatoon Service Centre area from June 2007 to June 2008.⁹⁵ The Ministry reported that there were a total of seven serious case incidents during that time.⁹⁶ These seven incidents included a fire, a missing child reported to the media, two acts of physical aggression of a foster child towards the foster parent, one miscarriage, an abduction from a visit, and one runaway.

In order for the Children's Advocate Office to investigate the concerns that overcrowding in foster homes was placing children and foster parents at risk, investigators sought to examine both the serious case incidents as considered by the Ministry and the interpersonal risks occurring between children in the home, which the CAO investigators refer to as "child-on-child" violence. The issue of child-on-child violence in foster homes in general was of concern to the Children's Advocate Office, as a six month sampling of the children in the care of the Minister, prepared by managers in the Saskatoon Service Centre in 2006, indicated that 78 per cent had mental health issues, 67 per cent suffered from Fetal Alcohol Syndrome, 50 per cent exhibited violence and aggression, 45 per cent had been sexually exploited, 41 per cent had addictions issues and 33 per cent were sexually intrusive.⁹⁷

The Children's Advocate Office requisitioned information from the Ministry of Social Services on the number of incidents of child-on-child violence reported from all foster homes in the Saskatoon Service Centre from June 2007 to June 2008.⁹⁸ The Ministry reported three instances of child-on-child violence during that time in all foster homes.⁹⁹ Two of these three reported incidents of child-on-child violence occurred in foster homes that were overcrowded.

These three incidents included a 14-year-old girl who was physically assaulted by two youths residing with her in a foster home with eight children placed (the assault took place out in the community), a 15-year-old boy cut by a youth in a foster home during an argument, and a nine-year-old boy thrown to the ground and stepped on at his neck by another nine-year-old boy in a foster home with five children placed.

The Children's Advocate Office's subsequent review of 13 overcrowded foster home files and interviews with foster parents, found that an additional 18 incidents had occurred in eight of the 13 homes reviewed that CAO investigators considered to be child-on-child violence. As such, concerns regarding child-on-child violence were found to be present in 62 per cent of overcrowded foster homes reviewed. None of these incidents were reported by the Ministry of Social Services as part of the response to the Children's Advocate Office's requisition for reports identifying serious

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Letter from Marvin Bernstein, Children's Advocate, to Donna Harpauer, Minister of Social Services (23 June 2008)

⁹⁶ Letter from Jennifer Colin, Director, Program Support, Ministry of Social Services, to Vanesa Vanstone, Investigator, Children's Advocate Office (9 July 2008).

⁹⁷ Ministry of Social Services, *Resources: Residential Service for Youth Centre Region* [PowerPoint presentation] (Saskatoon: 2007).

⁹⁸ *Supra* note 95.

⁹⁹ *Supra* note 96.

case incidents or incidents of child-on-child violence. This finding demonstrates that the Ministry, centrally, was either not aware of these incidents documented on the regional files, or that the Ministry was aware of the incidents, but failed to classify them as serious case incidents.

In one case previously referenced in this report, the Ministry's files document that a 17-year old girl was placed by the Ministry in an overcrowded foster home that, according to the foster home assessment on file, was approved for three placements. However, the foster home had seven children residing there at the time of this particular placement. Ministry documentation at the time of the placement identified that the 17-year-old's "behaviors are sexualized" and that she was low functioning. This 17-year-old girl was placed in this home by the Ministry staff who knew that she would be sharing a bedroom with a 12-year-old girl.

At the time of placement, the Ministry caseworker advised the foster parent that:

She would have to tell [the girl] every day that...touching the other children in any way is inappropriate. We [Ministry of Social Services] are aware of the risks of this being a co-ed home ...will have a case plan and safety plan put in place for [the girl] and the other kids...we are aware no one can provide 24 hour supervision all the time – we know incidents will come up.

The next day, the Ministry of Social Services file noted that the 17-year-old girl masturbated in front of her new roommate, who was scared so she kept quiet.¹⁰⁰

The Children's Advocate Office's review of related files found this same 17-year-old had just been moved to this current foster home as a result of sexual inappropriateness with a 12-year-old developmentally-delayed girl in another overcrowded foster home. Neither of these incidents involving the 17-year-old girl was reported to the Children's Advocate Office by the Ministry as incidents of child-on-child violence. Further, there is no indication on file that this matter was reported to the police or any of the children's parents.

Another Ministry file documented that "inappropriate sexual touching" occurred in a foster home, where the Ministry of Social Services had approved up to 10 placements (four therapeutic and six emergency) and where 13 children resided. This incident involved two girls, aged nine and 11, who were "licking" the vagina of another girl age nine who had an IQ of 50.¹⁰¹ This incident was not reported to the Children's Advocate Office by the Ministry of Social Services as an incident of child-on-child violence. Further, there is no indication on file that this matter was reported to any of the children's parents.

In another file, the Ministry documented concerns that a boy in an overcrowded foster home was extremely violent and had kicked with shoes on in the face of two other boys living in the home. The foster mother tried to separate them during the day, but concerns remained because during the night the three boys shared a room. The file noted that no other rooms were available in the overcrowded foster home as they all had girls in them. Further, the Ministry files documented that the foster mother did not know the offending boy's last name, as she had not been provided with a blue book or his health card.

In yet another case, an eight-year-old boy was placed in an overcrowded foster home. This foster home was approved by the Ministry to care for up to four children, yet eight children had been placed in this resource. The Ministry file documents that the eight-year-old boy, who was not getting his way, urinated into the mouth of a three-year-old boy.¹⁰² Again, this incident was not reported to the Children's Advocate Office by the Ministry of Social Services as an incident of child-on-child violence. Further, there is no indication on file that this matter was reported to either of the children's parents. This home alone had seven incidents of child-on-child violence documented by Ministry staff in a one-year time-frame.

100 *Supra* note 80.

101 *Ibid.*

102 *Ibid.*

The interpersonal safety concerns documented on the Ministry files were also reported to the Children's Advocate Office during the course of interviews with Ministry of Social Services front-line staff. These caseworkers expressed a great deal of apprehension and concern over the safety of the children they have been placing in overcrowded foster homes. Ministry staff told the Children's Advocate Office that they fear they are removing children from unsafe homes, only to place them in unsafe overcrowded foster homes. They reported that the number of allegations of child-on-child violence has increased, but no one is investigating these concerns. They stated that they receive "allegations all the time" and that these allegations are not documented or investigated by the Ministry of Social Services. The Ministry staff interviewed stated that they advised their supervisors of their concerns, and that this was not new information to Ministry managers. Further, the staff felt that they had been labeled as troublemakers within the Ministry for raising their concerns.

Similar concerns regarding children's immediate personal safety were also documented in the 2007 report titled, "Workplace Concerns in the Department of Community Resources," wherein one Ministry staff member was quoted by the Saskatchewan Government Employees Union (SGEU) that, "I am afraid of children dying"¹⁰³The report continued to state that:

They [foster parents] are also subject to great risk by the number of children they are pressured to care for and the behaviors they are expected to manage, often with little support. Some foster homes take in youth that staffed facilities refuse to accept.¹⁰⁴

The information provided by the Ministry front-line staff regarding the increase in violence between foster children was corroborated by information received during the Children's Advocate Office's interviews with foster parents, as well as during the meetings convened with foster parents by the then Minister of Community Resources in 2007.

Foster parents expressed concern that there has been an increase in the level of violence between children residing in the home as well as an increase in violence directed against the caregiver. Fifty per cent of foster parents interviewed reported incidents of child-on-child violence or concerns about the safety of the caregiver. One foster parent shared that, they believed that the risk increases in homes with a higher number of kids in the home. Several foster parents provided accounts of incidents that occurred in their own overcrowded homes.

In one account, a foster parent stated that there had been a couple of instances of child-on-child violence in her home where children were sexually intrusive with each other. In one instance, the foster parent found a three-year-old girl with another three-year-old girl. The first girl had pulled the other girl's pants down and had kneeled down in front of her with her face by her privates about to "perform oral sex". The foster parent called Social Services to report the incident. The Children's Advocate Office was advised that the Ministry responded by moving the offending three-year-old to another daycare/foster home. The Children's Advocate Office found evidence on the Ministry's files that staff had been advised of these incidents, yet, there was no corresponding serious case incident report or notification provided to the Children's Advocate Office that the Ministry perceived and responded to these incidents as serious case incidents.

The increased level of risk in foster homes that are overcrowded is not lost on children. Of the 30 children placed in overcrowded foster homes who were interviewed as part of this investigation, 58 per cent recommended that the maximum number of children per foster home should be five or less. The most frequent cited reasons for this number by the children was that it was quieter, less hectic and stressful, and they received more personal attention with fewer children in the foster home.

103 *Supra* note 65 at 13.

104 *Ibid.* at 9.

5.2.6 Compliance with Ministry Policy on Investigations of Complaints of Abuse and Neglect

Ministry policy requires that “complaints concerning the abuse or neglect of children in care shall receive immediate and thorough response to ensure the safety and well-being of all children in the home” in accordance with Ministry policy on Investigation of Complaints of Abuse or Neglect of Children in Care.¹⁰⁵ This policy outlines rigorous procedures involving the:

- Senior Program Consultant.
- Executive Director of the Saskatchewan Foster Families Association.
- Regional Director or designate.
- All supervisors and workers directly involved with the foster home.
- All children in the foster home.¹⁰⁶

Police notification is required:

[W]here there is reasonable grounds to believe that an offence has been committed. Complaints should be conferenced with the police to jointly determine the nature of their involvement. During notification and/or consultation, police should be made fully aware of any circumstances of the foster home and any circumstances of the children in the home that may be relevant to the allegations.¹⁰⁷

The caseworker conducting the investigation must immediately assess the risk to the child by:

- interviewing the child(ren); and
- interviewing the caregivers.¹⁰⁸

The child’s social worker, following consultation with the investigating worker and supervisor, will contact the child’s parents/guardians to inform them of the investigation. The parents/guardians of children in permanent or long-term care should be notified, where there is ongoing involvement with the child.¹⁰⁹

During the investigation, the child protection caseworker will determine:

- what happened;
- who was involved;
- circumstances surrounding the incident;
- seriousness of the situation; and
- possible contributing factors.

The investigating worker will include all persons who may have information which will assist in the completion of a thorough, conclusive and impartial investigation including children in the home, children who were previously in the home, workers who have placed children in the home, the foster home worker, collateral agencies who have knowledge of the family.¹¹⁰

Investigations are to be completed within thirty days. The foster family and any children who may have been removed during the investigation must be informed of the timelines. A written report, including findings of the investigation and an assessment of the family’s ability to provide a safe and nurturing environment for children placed in their care, is to be completed and submitted to the Regional Director or designate. The Regional Director or designate will determine if the investigation is complete or if further action is required.¹¹¹

¹⁰⁵ *Supra* note 15 at s.4.4.10.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* at 66.

¹¹¹ *Ibid.*

The suitability of the resource for further placements must be evaluated following the completion of the investigation, regardless as to whether the allegation was substantiated or unsubstantiated. The primary consideration must be the assessed safety and quality of care the home can provide, within the context of *The Child and Family Services Act*. The evaluation is to be completed within two weeks of the conclusion of the investigation.¹¹²

A final report is to be completed when the Regional Director or designate is satisfied that the investigation is complete. The final report of the investigation is to be immediately prepared and forwarded to the Senior Program Consultant, Foster Care, using the **Final Investigation Report Format** (outlined in Chapter 12.13). When the Regional Director or designate is satisfied that the foster home review is complete, the final report of the foster home review will be immediately forwarded to the Senior Program Consultant, Foster Care. **All final reports related to the assessment, review, and investigation of a foster home will be placed on the foster home file.**¹¹³ [Emphasis added]

Additionally, Ministry policy requires that a Foster Home Assessment and Review shall be completed immediately following allegations and investigations of abuse or neglect. This Foster Home Assessment and Review and the subsequent Annual Foster Assessment and Review shall note the outcome of all investigations.¹¹⁴

Ministry policy also requires that the information and outcome of all investigations into complaints of abuse or neglect of children in care be documented on the foster family file, regardless of whether the allegation is deemed false or malicious, assessed to be a complaint based on the standard of service/care provided, or where it is assessed that a child may have been abused or neglected.¹¹⁵

The results of each of the concerns are to be noted at the time of the next annual foster home assessment and review, including the nature of the concern, the assessment of validity and any corrective action must be documented on the foster family file. Where there are concerns about a foster family's abilities, actions, or standards of the home, these need to be brought to the foster family's attention quickly and in a clear, objective fashion.¹¹⁶

For the period from June 2007 to June 2008, the Ministry of Social Services reported that 13 allegations¹¹⁷ were made regarding abuse or neglect committed by foster parents, their family members or alternate caregivers. The Ministry of Social Services indicated that it had conducted 13 investigations into these allegations, of which four were conducted into caregiver behaviour in overcrowded foster homes. CAO investigators could not find any adequate documentation that the Ministry policies and practices associated with any of these investigations were followed or any final investigative reports on file.

As approximately 16 per cent of foster homes in the Saskatoon Service Centre area were deemed to be overcrowded, and 31 per cent of all foster home investigations occurred in overcrowded foster homes, it indicates that there may be a significant correlation between overcrowding and risk to children residing in these foster homes.

In addition to the 13 investigations reported by the Ministry, CAO investigators found seven additional allegations of neglect or abuse by foster parents towards children documented in four of the 13 foster home files reviewed. Allegations forwarded to and received by the Ministry in these four homes included children being hit by caregivers with hands, hockey sticks and boards; inappropriate discipline or assignment of too many or age-inappropriate chores for the age of a child; and neglecting the physical and mental health of children by not treating

¹¹² *Ibid.*

¹¹³ *Supra* note 15 at s.4.4.10.

¹¹⁴ *Ibid.* at chapter 4, page 53.

¹¹⁵ *Ibid.* at chapter 4, pages 64 - 65.

¹¹⁶ *Ibid.* at chapter 4, pages 67 - 68.

¹¹⁷ It should be noted that the Ministry of Social Services reported that 13 such investigations were completed during this investigation; however, when this information was cross referenced with the Saskatchewan Foster Families Association, two additional allegations were found resulting in 15 total allegations that were investigated.

lice or depriving children of attention when confining them in rooms for long periods of time. All of these allegations should have warranted an investigation pursuant to the Ministry policy directing the Investigation of Abuse or Neglect of Children in Care. However, all allegations failed to be investigated pursuant to the process outlined in Ministry policy as evidenced by a lack of final investigation report documenting the completion of this process on file.

In one overcrowded foster home, documentation was on the Ministry file, indicating that a referral source contacted the Ministry of Social Services regarding allegations of physical and emotional abuse as well as neglect committed by the foster parents. The source stated that she had witnessed the foster parent “smack [a foster child], pull her by her ear and drag her to her room by the back of the head,” tell this child that she was “a pig,” and “continue to give the other kids some [food] while the foster child sat hungry.” The source had also heard the foster parent refer to the children in her care as “truck payment, groceries or Florida trip” instead of using their names. When the foster parent was upset with one of the children, she said “I can’t get rid of you ‘cause you’re my truck payment.” These allegations were referred to the Ministry of Social Services; however, there was no investigation report on the foster home file.¹¹⁸

In another overcrowded foster home, documentation was on the Ministry file indicating that numerous allegations of neglect, inappropriate punishments and hitting were reported in the summer of 2007. One such incident was witnessed and documented by a Ministry of Social Services caseworker who upon visiting the home, found over 10 children watching TV or colouring in a room supervised by contracted home help workers. At the time, the foster parent was not in the home. The caseworker noticed that a child, estimated to be two and half to three years of age, had been separated into another room down the hallway. A gate was, “fencing/RESTRAINING him, he was gasping for air, appeared very upset.... No one seemed to be attending to his needs.” Throughout the caseworker’s 20 to 30 minute visit to the home, the home help workers did not get up to check on the child even though he continued to cry. The caseworker found out from these workers that the “caged room” was being used by the foster parent, her daughter and the home help workers as punishment for a child young enough to use a soother. The caseworker commented in the file, “This is not ACCEPTABLE at his developmental age and IS technically neglect, which can be very traumatizing to this young guy.”¹¹⁹

In response to another allegation made a month earlier by a child in this foster home, a Ministry supervisor wrote:

If a child abuse report has been made to the police, I think we are obligated to investigate as well, although from the information provided here it sounds like ongoing inappropriate parenting and discipline, we would still need to interview the children to ascertain this...concerns about parenting style that I am aware of have arisen before....¹²⁰

Other Ministry staff recorded at other times in this foster home file that they were, “...also concerned that the [foster parent] is overloaded presently...”, and that, “I would certainly agree that this is one family that should not be overloaded – even with supports.” This foster home remains overcrowded as of November 2008.¹²¹

One of the most disturbing accounts of overcrowding found by CAO investigators comprehensively documented on the Ministry files during this investigation involved a brand new foster home that was approved for “4 spots” in June 2007. This home was initially designated as an intern level foster home approved to take a maximum of four children aged one to five years for emergency care only. At the time of the initial approval, the home did not meet physical accommodation standards for safe storage of alcohol and power tools.

¹¹⁸ Intake Report received at the Children’s Advocate Office (1 May 2008).

¹¹⁹ *Supra* note 80.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

Within days of becoming a foster home, the Ministry of Social Services had placed five children in this home including two “VERY VERY active” three-year-old twins. The foster home file reveals that the foster parent indicated to Ministry staff that they were “willing to take two more -- however they are requesting the age 4-8 years.” The Ministry caseworker noted in the file that, “I support their decision to limit age here because we don’t want to burn this family out before they’ve even begun....”

Within one month of becoming a foster home, the Ministry of Social Services had placed seven children in the home including two sibling groups – one of three children and one of two children, as well as two more non-related children. These children include two one-year-olds, two two-year-olds, one three-year-old, two five-year-olds and one six-year-old. With this many children in the home, the foster parent was funded for 80 hours of contracted home-help per week.

Within two months of becoming a foster home, the Ministry of Social Services had placed 12 children in the home of which nine were still in diapers, two were undergoing toilet training and only one was in school. Increased contracted home-help was funded for 176 hours a week. A completed Foster Home Safety Check List from this time contained a lack of information as to whether this home was in compliance with several areas including posting an evacuation plan and storage of harmful materials.

Within three months of becoming a foster home, the Ministry of Social Services had placed 14 children in the home and concerns were beginning to be raised about issues of neglect. A Ministry caseworker notes that these concerns, including issues of lice and clothing, were raised with the foster parent. The caseworker notes in the foster home file, “[The foster parent] was not aware of this...she does tend to minimize.”¹²²

Within four months of becoming a foster home, the Ministry of Social Services had placed 18 children in the home including “four new placements on the weekend.” A Ministry caseworker noted in the foster home file that, “[The foster parent] is now way too high [number of children in the home]... [she] tends to want her #'s high.”¹²³

Within six months of becoming a foster home, the Ministry of Social Services had reduced the number of children placed in the home to between eight and 10. However, within two more months, the foster home file indicates that the home was back up to 15 children.

Within one year of becoming a foster home, the Ministry of Social Services was meeting with the foster parent to discuss a number of concerns including the fact that, “the children cannot continue to deal with chronic lice...”, and that the “home is very stark and appears to have minimal toys.”¹²⁴

After reviewing the Ministry file detailing these events in this foster home, on August 27, 2008, CAO investigators made an appointment to visit the home on September 9. On the date of the scheduled visit, there was no one home at the arranged meeting time. When the CAO investigators contacted the Ministry of Social Services, staff advised that the foster home had been “closed due to abuse concerns.”¹²⁵

While at the foster home for this scheduled visit, the CAO investigators observed that the building was a duplex, with tattered sheets hung in the front window serving as drapes. These sheets provided insufficient privacy to the residents inside. Looking through the window, CAO investigators could see garbage bags along the entire wall of the front room in one side of the duplex that appeared to be used as a dining room. This pile of garbage bags was approximately three to four feet high. The front room of the other side of the duplex appeared to be used as a living room. The one side of the backyard was overgrown with weeds, had bags of garbage, what appeared to be cat litter and a child’s ball glove. The other side of the backyard was strewn with worn out and broken toys, and children’s shoes and clothing. The gates on both sides of the duplex’s backyards were broken

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ Telephone communication with Ministry of Social Services staff and CAO Investigators.

and would allow small children to easily leave the yard if left unattended or provide easy access to passers-by.

The Children's Advocate Office was informed by a referral source that they had seen a small hole cut out in the wall that connected the two sides of the duplex through which the children would go from one side to the other at meal time. Ministry staff advised CAO investigators that they were aware of this access, but had understood that the foster parent was the only one who used this cut out to get from one side to the other side of the duplex without going outside. CAO investigators were unable to interview children about this hole due to the home being closed at the time of the scheduled visit.

On September 10, 2008, the Children's Advocate Office formally contacted the Ministry of Social Services advising that:

We received a call concerning the care that children were receiving in the care of the [duplex] foster home. It is our understanding that this home is now under investigation and I am requesting that once your investigation is complete you forward the results to this office...¹²⁶

During subsequent interviews with other foster parents, one foster parent reported that they received children from this foster home who were "crawling with lice." This foster parent recounted that they had mentioned to a Ministry caseworker that they were picking up children who had been at the duplex foster home. This foster parent reported that the Ministry caseworker said, "Shh, shh, don't say [the duplex foster parent's name]. We still have kids there — we've closed her but have not emptied her out." This foster parent understood that the home was closed because the duplex foster parent hit the children resulting in bruises on a child's back.¹²⁷

A copy of the report on the investigation into this foster home that was to be completed pursuant to Ministry of Social Services policy had not been provided to the Children's Advocate Office as of December 22, 2008, the date the preliminary report into foster home overcrowding in the Saskatoon Service Centre was provided to the Ministry. Subsequent to that notification, a copy of a final investigation report was sent from the Ministry to the Children's Advocate on February 2, 2009.

In the report were details of an investigation launched on September 5, 2008, following an allegation of physical maltreatment of a child placed in the foster home. This and other allegations of physical maltreatment by foster home-help staff were investigated, as were ongoing concerns and issues of improper bathing, lice infestation, inadequate feeding, not using car seats, the home not being child-friendly and the fact that the duplex was not the foster mother's primary place of residence. These allegations were substantiated and the home was officially closed on October 7, 2008.¹²⁸

In just over one year of operation, 104 children had been placed in this foster home.¹²⁹

5.3 The Effects of Placing Children in Overcrowded Foster Homes

The importance of placing children who have been removed from their parents' care into an appropriate out-of-home resource is unquestionably the single most important action that the Ministry of Social Services will make when trying to plan for both the short and/or long-term care of that child. Environmental, interpersonal and self-induced factors will affect the child for the rest of their lives. By apprehending children and taking them into their care, the Ministry of Social Services has a higher statutory, common law, fiduciary and moral duty to provide quality care.

¹²⁶ Electronic mail correspondence between Owen Manz, Area Service Manager, Child and Family Services, Ministry of Social Services, and John Brand, Director of Advocacy, Children's Advocate Office (10 September 2008).

¹²⁷ *Supra* note 63.

¹²⁸ Letter from David Weninger, Regional Manager, Ministry of Social Services, to Marvin Bernstein, Children's Advocate (2 February 2009).

¹²⁹ *Ibid.*

The significance of the placement is reflected in the Ministry of Social Services policy objective to “provide the child with a family environment to facilitate child development.”¹³⁰ The theoretical foundation upon which the placement and planning for children who are being placed in out-of-home care is grounded, is in attachment theory. Ministry of Social Services policy describes the purpose of attachment as required “to promote the child’s sense of security and to enable him/her to develop physically, emotionally, cognitively and socially.”¹³¹ The policy further correctly identifies that:

Attachment in childhood is formed through a consistent, daily, caretaking of relationship between an adult and a child (Hess 1982). Physical care is the mechanism: feeding, bathing, holding, clothing and rocking. Physical closeness and body contact during which the adult meets the child’s needs for physical and emotional comfort are integral to the process. The adult’s ability to relieve the child’s distress (hunger, fear, cold, wet) is key.¹³²

The *Diagnostic and Statistical Manual of Mental Disorders* describes the diagnostic features of Reactive Attachment Disorder to be associated with: grossly pathological care that may take the form of persistent disregard of the child’s basic needs for comfort, stimulation and affection; persistent disregard for the child’s basic physical needs; or repeated changes of primary caregiver that prevent formation of stable attachments (i.e., frequent changes in foster care).¹³³

Ministry of Social Services policy further describes a personality created by “foster care drift,” which can occur when a child is separated from inadequate or abusive parents, then spends their childhood in a series of temporary placements (even excellent ones) and as a result begins to demonstrate behaviours that include very little conscience, poor impulse control and low self esteem, poor relationships with peers, learning difficulties, and eventually an inability to parent his or her own children.¹³⁴

The implications of not addressing the overcrowding of foster homes and frequent movement of children from home-to-home, and trying to manage “numbers” are potentially debilitating for the child. The fact that the overcrowding crisis in the Saskatoon Service Centre area has received inadequate action since the predicted situation arose, demonstrates the absence of a focus on children’s specific needs when they are placed into out-of-home care.

Interviews with a child psychiatrist¹³⁵ and two early childhood psychologists¹³⁶ confirmed that they had observed the adverse effects overcrowding foster homes has on children. One psychologist recounted visiting an overcrowded foster home with 10 children under the age of five, two birth children and three adults all in a small living room. When the psychologist came to the child gate blocking the entrance to the room, the young children “swarmed” to her with their arms raised up seeking attention. The impression she was left with was that this looked like a “puppy mill.”

The psychologists indicated concerns that Ministry front-line staff lacked knowledge of the impact overcrowding had on children and that some children’s behaviors were being attributed to the family of origin, whereas it was more likely due to the child’s ongoing needs for attachment being denied in their overcrowded foster home. Children who act out within an overcrowded foster home may be pushing to get their needs met, while children who may be seen as demonstrating good behavior by sitting quietly and not causing any type of disruption in the overcrowded foster home, may simply be not pushing to get their needs met. The psychologists cited several signs of attachment disorder:

- Head banging
- Hoarding
- Eating non-stop
- Extreme apathy

¹³⁰ *Supra* note 15 at s.4.4.

¹³¹ Saskatchewan, Ministry of Social Services, *Family-Centred Services Policy and Procedures Manual* (Regina: Queen’s Printer, 2004) at chapter 7, section 4, page 1.

¹³² *Ibid.*

¹³³ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington: American Psychiatric Association, 1994) at 118.

¹³⁴ *Supra* note 131 at chapter 7, section 4, page 2.

¹³⁵ Telephone Interview of a child psychiatrist by a CAO Investigator (21 October 2008).

¹³⁶ Interview of child psychologists by CAO Investigators (14 October 2008) at the Children’s Advocate Office.

- Developmental delay
- Speech delay
- Motor delay
- Increased aggression
- Decreased impulse control
- Attention Deficit Disorder

Assumptions are made that children placed in overcrowded foster homes can play independently or together with other children. In fact, the behaviors demonstrated by children coming into care today, including a prevalence of sexualized and aggressive acts, require more supervision, and more one-to-one attention to mitigate and/or prevent risk of harm to themselves or others. Children who are victims of neglect, maltreatment and/or abuse need a home environment that is stable, safe, predictable, calm and quiet to heal and develop — overcrowded foster homes simply cannot provide this type of atmosphere. Foster parents in overcrowded homes, no matter what their intentions or amount of home help they receive, simply cannot address the specialized needs of the excessive number of children placed in their care.

Several Ministry of Social Services staff identified to the CAO investigators that because they knew of the impact that the overcrowding situation was having on the foster children and families, they resigned from their position or asked to be transferred to a different position in the Ministry. The staff identified that due to the lack of attention to the problem by Ministry managers, and because they felt little hope that the situation would change, they could no longer ethically or personally live with the responsibility of placing children in the overcrowded homes.¹³⁷ The Children's Advocate Office was advised that staff have become desensitized to the issues. Their personal options to deal with the problem are to "suck it up" and continue to try and place children in the best way they can, leave, or become angry. Leaders from the Saskatchewan Government Employees Union interviewed by CAO investigators also expressed concerns regarding the emotional and attachment implications for children not placed in family-based home environments. These concerns are canvassed later in this report.

5.4 Ministry of Social Services Response to Overcrowding

5.4.1 Past Investigations, Reports and Recommendations

It is helpful to reflect on what has transpired in the past to gauge the progress that has been made in relation to issues that have challenged the Government of Saskatchewan respecting children in out-of-home care. Problems in the child welfare system are not recent and have previously been documented.

The Protection of Children: The Rights of Children: The Urgent Need to Improve a System in Crisis (1986)

Twenty-two years ago, on December 31, 1986, David A. Tickell, Ombudsman for the Province of Saskatchewan released a significant report titled "The Protection of Children: The Rights of Children: The Urgent Need to Improve a System in Crisis." In concluding his report, Ombudsman Tickell noted serious systemic problems within the child welfare system which he observed that needed to be addressed. These issues reflect the current problems that are documented in Ministry of Social Services files and voiced by children, foster parents and Ministry personnel in the context of this investigation. The Ombudsman report identified the following concerns:

- Foster children being traumatized and their problems compounded by too many moves.
- Inappropriate matching of foster children and foster parents.
- Foster parents not receiving sufficient information about the children being placed with them.
- Good foster parents being overloaded by the Department with too many or too difficult foster children.

¹³⁷ Interviews of Ministry of Social Services staff by CAO investigators (14 October 2008 and 21 October 2008) at the Children's Advocate Office and over the telephone.

- Shortage of foster homes and shortage of specialized foster homes.
- The practice of returning children to their natural parents regardless of the risk to them because of the absence of appropriate foster parents.
- Inadequate Departmental assistance and support for foster parents who are known by the Department to be under emotional stress and/or suffering from ill-health.
- Constant changes in caseworkers with the resulting lack of consistency in worker approaches.
- Not moving foster children quickly enough when it is known that they are at risk in their respective foster homes.
- Not enough workers. This has been an admission by many senior staff workers in numerous of our investigations.
- The absence of adequate support resources for the foster parents and their foster children.
- The tendency of the Department to say one thing and then do another.¹³⁸

More recently, the Children's Advocate Office has completed investigations into the deaths of children in foster care, a review of the foster care system, and several annual reports, all which reflect the themes that the Ombudsman report previously identified.

Karen Rose Quill (1998)

Ten years ago, in 1998, the Children's Advocate Office completed an investigation into the death of Karen Rose Quill, a 20-month-old child who died in an overcrowded foster home while in the care of the Minister. The Children's Advocate Office concluded that Karen's death would have been prevented had the Department of Community Resources provided Karen with the level of service that she was entitled to, as outlined in policy. The Children's Advocate Office implored that:

The child welfare system must be able to provide children with a standard of care to which they are entitled. It was apparent from this review that there is a need for training and a monitoring mechanism to ensure that DSS workers are not only aware of the policies and standards but also of the impact on children when these standards are compromised.¹³⁹

The Children's Advocate Office concluded that management at all levels exhibited a tolerance for non-compliance with established procedures in regard to Karen's placement in an overcrowded foster home.¹⁴⁰

In response to Karen Quill's death, the then Minister of Community Resources committed to respond to the recommendations made in the Karen Quill report.¹⁴¹ In 1999, all existing foster home placements were reviewed. An assessment was completed on all homes where the number of foster children exceeded the limit of four.¹⁴² An approval process was established for exceeding the limit of children placed in a home and to monitor foster homes that had more than four foster children placed in that home.¹⁴³ The Minister of Community Resources wrote to the Children's Advocate:

Many of your recommendations direct the Department to the full implementation of current policies and practice. I have directed my Department to work towards consistent compliance with these policies and

¹³⁸ Saskatchewan Ombudsman, *The Protection of Children: The Rights of Children: The Urgent Need to Improve a System in Crisis* (Regina: 1986) 32-33.

¹³⁹ Saskatchewan, Children's Advocate Office, *Child Death Review Karen Rose Quill* (Saskatoon: 1998) at 6.

¹⁴⁰ Policy 4.4.7 of the *Children's Services Policy and Procedures Manual* states that the maximum number of children that can be placed in a foster home at any given time cannot exceed four. In the case of Karen Quill, there were seven children placed in the foster home ranging in ages from two to nine years of age, with the majority of the children being three years and under.

¹⁴¹ Letter from the Honourable Lorne Calvert, Minister of Community Resources, to Deborah Parker-Loewen, Children's Advocate (9 June 1998).

¹⁴² Saskatchewan, Children's Advocate Office, *Children and Youth in Care Review: LISTEN to Their Voices* (Saskatoon: 2000) at 149.

¹⁴³ Policy 4.4.7 of the *Children's Services Policy and Procedures Manual* states that exceptions will only be made with the Regional Director or designate (Program Manager or Service Centre Manager) approval which will require review and renewal every two weeks.

practices and to develop added quality assurance mechanisms to measure such compliance.¹⁴⁴

Child Death Summary Reports (1999-2001)

As a result of the concerns identified within Karen Quill's child death investigation, the Children's Advocate Office began to initiate child death investigations into those deaths that occur within 12 months of the child having been in care or having received government services. Each of the three subsequent child death summary reports identified concerns regarding non-compliance with policy which compromised the level of service the children received.¹⁴⁵ In the Children's Advocate Office's second child death report, *A Summary of Child Death Reviews for the Year 1999*, the Office again reported concerns regarding non-compliance with policies and connected the non-compliance with factors significant to a child's death. The Children's Advocate Office found that:

[C]learly, the DSS lack of adherence to existing policies and inadequate supports to this foster family were factors significant to (the child's) death.¹⁴⁶

In another of those reviews, the Children's Advocate Office found that:

[T]he foster home's ability to diligently care for the foster children placed with them was compromised by the fact that their capacity for quality care had been over-extended by the DSS, thus placing these children at risk of harm.¹⁴⁷

The Children's Advocate Office's third child death report, *A Summary of Child Deaths for the Years 2000 and 2001*, identified three child deaths where the Department of Community Resources placed children without adequately assessing issues within the resource that ultimately compromised the care or safety of children.¹⁴⁸

Based on the concerns observed in Karen Quill's child death investigation and the 128 subsequent child death investigations,¹⁴⁹ the Children's Advocate Office has forwarded 109 recommendations¹⁵⁰ to address issues ranging from a lack of standards to protect the safety of children, manage the cases of children in care, non-compliance with established policy and procedure, assessment and intervention, approval of placements, integrated case management, and the development of an information management system in order to track and adequately plan what is happening to children.¹⁵¹

Children and Youth in Care Review: LISTEN to Their Voices (2000)

In 2000, the Children's Advocate Office completed a comprehensive review of the foster care system at the request of the, then Minister of Community Resources. The major themes of the *Children and Youth in Care Review: LISTEN to Their Voices* final report were:

- Listen to children and youth.
- Provide time and resources to the caregivers.
- Make practices consistent with policies and legislation.
- Be a responsible parent yourself.

¹⁴⁴ Personal correspondence with Honourable Lorne Calvert and the Children's Advocate Office (9 June 1999).

¹⁴⁵ In *A Summary of Child Death Reviews: August 1996 to December 1998* (published by the Children's Advocate Office in February 2001), the CAO identified a number of issues and themes that were evident in the review of child deaths which occurred between August 1996 and December 1998. Of the eight identified issues and themes, non-compliance with policy was identified as a recurring problem. It was further noted that the standards and policy requirements that were in place to provide services to children were not adhered to consistently.

¹⁴⁶ Saskatchewan, Children's Advocate Office, *A Summary of Child Death Reviews for the Year 1999* (Saskatoon: 2003) at 29.

¹⁴⁷ *Ibid.*

¹⁴⁸ Saskatchewan, Children's Advocate Office, *A Summary of Child Deaths for the Years 2000 and 2001* (Saskatoon: 2005) at 24 & 25.

¹⁴⁹ 117 child deaths took place between August 1996 and December 2001 and were publicly reported on in *A Summary of Child Death Reviews for the Years 2000 and 2001* at 4. In addition, 11 child deaths were publicly reported on in the 2006 Annual Report, *Children and Youth First ... The Right Focus* at 19.

¹⁵⁰ Twenty-seven recommendations were forwarded in *Child Death Review Karen Rose Quill* (1998), seven forwarded in *A Summary of Child Death Reviews: August 1996 to December 1998* (2001), 13 in *A Summary of Child Death Reviews for the Year 1999* (2003), 52 in the *Children and Youth in Care Review: LISTEN to Their Voices* (2000), and 10 in *A Summary of Child Death Reviews for the Years 2000 and 2001* (2005).

¹⁵¹ Saskatchewan, Children's Advocate Office, *A Summary of Child Death Reviews for the Years 2000 and 2001* (Saskatoon: 2005).

- Work with First Nations and Métis Nation people and stop putting so many aboriginal children into care.
- Protect the traditions and cultural values of the children who are in care.
- Involve the people who care.
- Reduce child poverty.
- Invest earlier in children and families.
- Don't expect a quick fix.¹⁵²

One of the issues identified within this report was a serious gap and major disconnect between the legislation, policies and standards that have been put into place and the way child welfare services were being provided to children and families. The Children's Advocate Office reported that most of the failures or problems in the foster care system were a result of this disconnect between what was in policy and what was operating in practice.

Within this report alone, 52 recommendations were provided to government to address the major themes that were identified.¹⁵³ These recommendations were accepted by government and it was acknowledged that there was a need to develop a plan that would provide for sweeping system wide changes well beyond the recommendations of the Children's Advocate.¹⁵⁴

5.4.2 Multi-year Plan to Redesign Child Welfare Services

In June of 2001, the Department of Community Resources publicly announced a multi-year plan to redesign child welfare services. Three fundamental principles were identified as pillars of the strategic directions which were to be undertaken.

- Family is the primary influence in the growth and development of children. Our greatest investment needs to be in supporting families.
- Government's role as parent is fulfilled by a focus on permanence and independence for children and youth as well as providing high quality care and service.
- Community involvement and shared ownership is required in every aspect of program design and delivery.¹⁵⁵

Seven goals of child welfare redesign were developed along with specific program developments to accompany each goal. The goals of the redesign project were identified as follows:

- To provide high quality care for children and youth in care of the Minister.
- To support the community to provide services for families with high needs to serve children, youth and families to prevent the need for child welfare services.
- To provide services that increase the capacity of families to safely care for children and youth in their homes.
- To provide permanent families for children and prepare youth for independence.
- To work with First Nations and Métis people to provide culturally appropriate programs and services.
- To encourage and support community involvement and ownership in programs and services for vulnerable children and youth.
- To improve performance through the development of accountability measures.¹⁵⁶

The Children's Advocate Office has noted previously that these goals included a commitment to provide high quality care for children and youth in the care of the Minister and to improve performance through development of and reporting on accountability measures.¹⁵⁷

¹⁵² *Supra* note 142 at 126 - 127.

¹⁵³ *Ibid.* at 139 - 145.

¹⁵⁴ Saskatchewan, Children's Advocate Office, 2004 Annual Report, *10 Years of Advocacy... Do We Have Your Attention Now?* (Saskatoon: 2005) at 15.

¹⁵⁵ Saskatchewan, Department of Community Resources and Employment, *Child Welfare Redesign Summary of Development [Revised]* (Regina: 2002) at 1.

¹⁵⁶ *Ibid.* at 2 - 10.

¹⁵⁷ *Supra* note 154.

5.4.3 Introduction of Home-Help and Respite

As overcrowding became an ongoing concern in 2004-2005, the Department of Community Resources began to provide foster parents with financial support to hire in-home-help to provide assistance with cooking, cleaning and child care. The amount of support that foster parents received was based on the specific needs of the children in care, as well as the age and numbers of children in the foster home.

Some homes received up to 300 hours per week in order to manage the daily care, supervision, interaction with the Department, and/or appointments with professionals or family. A social worker was assigned specifically to work with the foster parents whose homes were overcrowded in order to assist in managing the children's needs and the foster home's capacity to meet them.

Foster parents found this home-help initiative to be administered inconsistently, whereby foster parents with the same number of children in care and/or with similar behavioral issues were not being offered the same support. The organization of the support program caused tension between foster parents and Department staff who were responsible for providing the support. Eventually a standard was set that the Department applied to assess the needs of each home based on the number of children and their needs.

More recently, a pilot project has been undertaken where the Saskatchewan Foster Families Association will be implementing and managing the home-help program.

Foster parents were also able to access up to 10 days of respite per year; however, in most instances the foster parents had to arrange for respite themselves. When dealing with having to find spaces for many children to place and/or children who require intensive supervision and care to ensure their and other children's safety, the foster parents identified that it was very difficult to arrange. Often, foster parents did not utilize the respite care afforded to them because of the complexity involved.

5.4.4 Increased Resource Requests

During this investigation the Children's Advocate Office interviewed several Ministry managers of the Saskatoon Service Centre. They emphasized that they understood the magnitude of the problem that the region was facing by the number of children that had or were projected to come into care. One manager stated that beginning in 2004, repeated budget submissions were made to the Director of Child and Family Services to obtain finances to hire staff, as well as to develop the required resources to meet the out-of-home needs of the area. The Ministry of Social Services was unable to access or provide detailed documentation of the budget requests made by the Saskatoon Service Centre between 2004 and 2007. The 2007-2008 budget request provided by the Ministry to the Children's Advocate Office supports the statements made by these managers.

The managers advised the Children's Advocate Office that despite presenting the projection of the looming crisis to the Director of Child and Family Services and the Deputy Minister's Office through the budget submission process, the response was that the Saskatoon Service Centre area would have to deal with the problem within its own current budget. Overspending was occasionally allowed; however, "Requests for additional funding to manage the overcrowding problem was not received well at Central Office."¹⁵⁸

The Children's Advocate Office was advised by one Ministry manager that as a direct consequence of not obtaining the required support at the time it was requested, that some children were, and still are, living in potentially unsafe environments. Children and their families' needs were not being met, case plans were stagnating, and there was an increase of stress and demoralization of staff.¹⁵⁹ Further, he stated that "the budget process was inadequate and needs to be tied to the clients' needs. If not linked to needs then it will fail. All levels of the system suffered as a result of the lack

¹⁵⁸ Interviews of Ministry of Social Services managers by CAO investigators (20 October 2008) at the Children's Advocate Office.

¹⁵⁹ *Ibid.*

of resources.”¹⁶⁰ On August 31, 2007, many years after having identified the overcrowding issue in Saskatoon, the Ministry announced enhancements to the foster care system. The then Minister for Community Resources publicly announced the following funding increases:

- \$4.1 Million to enhance foster care rates.
- \$3.3 Million to increase extended family caregiver rates.
- \$5.5 Million to develop more residential options.
- Hiring 60 new caseworkers to improve service delivery.¹⁶¹

In response to a Children’s Advocate Office request in October 2007¹⁶² for specific information regarding the implementation of these funding increases, the Department of Community Resources indicated that:

- Implementation dates for this funding were September 1, 2007.
- Details of plans for the development of more residential options such as group homes were still in progress.
- Fifty-four of the new caseworker positions had been filled; however, there remained difficulties in finding staff willing to work in central and northern Saskatchewan and that many of the new caseworker positions had been filled with candidates from existing positions within Child and Family Services causing a significant impact in staffing for many positions over the months to come in recovering from vacancies.¹⁶³

On June 23, 2008, the Children’s Advocate Office requested an update with respect to the various initiatives undertaken by the Ministry to address foster home overcrowding and the current status of the progress respecting these initiatives.¹⁶⁴ The response to this request in August 2008 from the Ministry advised that:

- \$2.7 Million was spent to develop or initiate development of approximately 60 spaces across the province.
- Anticipation that 20 new spaces will become available by March 2009.
- Permanency planning staff have been hired to reduce the overall number of children in care.
- Implementation of the PRIDE (Parent Resources for Information, Development, and Education) model of practice throughout the province. A major component of PRIDE is a focus on recruitment and retention by enhancing training and supports to foster families.¹⁶⁵

The Ministry indicated that they were working with First Nations and Métis organizations as well as the Saskatchewan Foster Families Association on ways to increase the number of foster families.

Progress on actual numbers of additional placement resources created in the Saskatoon Service Centre has not been provided by the Ministry of Social Services to the Children’s Advocate Office. The overcrowding situation in Saskatoon as of October 30, 2008, is that there are 45 overcrowded foster homes that currently house 336 children or youth. In just the four month span since CAO investigators established their benchmark statistics cited in Section 5.1.1 of this report, the number of foster homes that are overcrowded has grown by 32 percent and the number of children placed in overcrowded foster homes has grown by 28 per cent.

¹⁶⁰ *Ibid.*

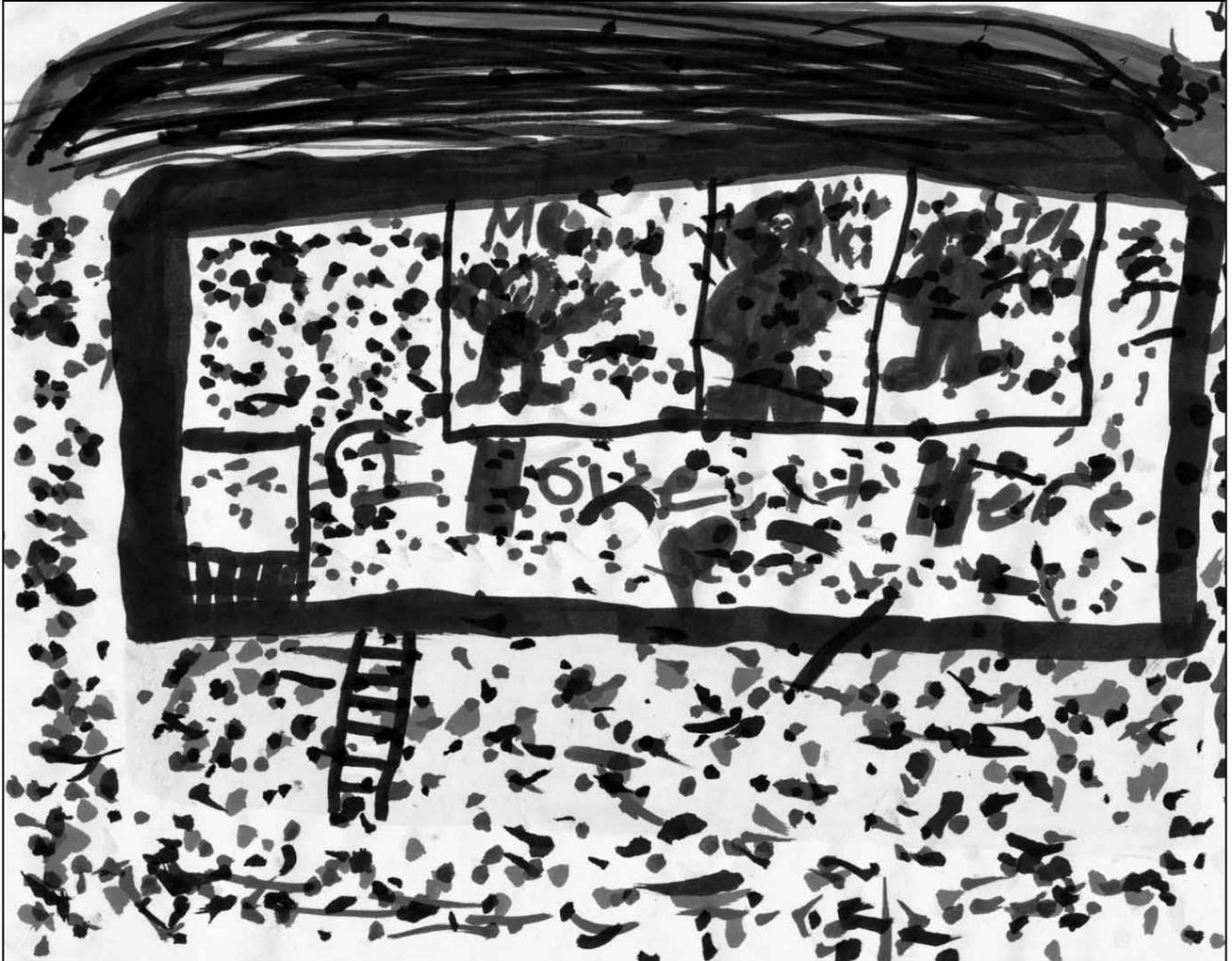
¹⁶¹ Ministry of Social Services, News Release, “Province Boosts Support for Vulnerable Children and Families” (31 August 2007), online: <http://www.gov.sk.ca/news?newsId=589bdfdb-5de6-4bbb-add3-b6779e74d708>.

¹⁶² Letter from Marvin Bernstein, Children’s Advocate, to Duncan Fisher, Deputy Minister, Ministry of Social Services (5 October 2007).

¹⁶³ Letter from Andrea Brittin, Executive Director, Child and Family Services, Ministry of Social Services, to Marvin Bernstein, Children’s Advocate (12 October 2007).

¹⁶⁴ *Supra* note 95.

¹⁶⁵ Letter from Allan Hansen, Deputy Minister, Ministry of Social Services, to Marvin Bernstein, Children’s Advocate (15 August 2008).



Kiley, a 9-year-old interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture of his foster home.

6 Analysis

6.1 Context for this Investigation

Frequently when child welfare issues are discussed, there is an inclination to immediately begin to cast blame on parents for the situations and conditions of the affected children. This focus on the cause of children coming into care sometimes diverts attention away from the current needs of these victims of neglect, abuse and abandonment. Once children have been admitted into the care of the Minister, it is a time when society—and the system that has been developed to intervene and care for them—should be rallying into action.

This investigation and report are not about how, why, or who is to blame for these children coming into the care of the Minister of Social Services. Rather, the Children's Advocate Office examined a very specific issue and area of the child welfare system—overcrowded foster homes managed and administered by the Ministry of Social Services in the Saskatoon Service Centre area. The questions asked were narrow in focus, yet revealed a broader picture of a foster care system mired in chronic crisis, without the appropriate human or financial resources, or the collective moral fortitude or political will to meet the unique and complex needs of children coming into the care of the Minister today.

That these conditions exist in the foster care system is nothing new to the Children's Advocate Office. CAO advocates and investigators are intimately aware of the challenges that children face within a system that is failing to provide the level of service they are entitled to and the challenges these limitations present for their caseworkers and caregivers.

Children in the care of the Minister have rights and entitlements that are not being met when placed in overcrowded foster homes. The Minister of Social Services, as legal parent/guardian, has a fiduciary duty to act as a 'prudent parent' and ensure that those rights and entitlements are protected and that care is provided to meet or exceed the best interests of the child. While the Minister may delegate the authority to provide those services for children in out-of-home care (i.e., to Ministry staff and/or foster homes), the Minister of Social Services cannot delegate his or her legal responsibility and fiduciary duty towards those children in Ministry care.

6.2 Too Many Children, Too Few Foster Homes

The statistics provided by the Ministry of Social Services to the Children's Advocate Office reflect an abundance of children that require out-of-home care without a corresponding number of foster homes to meet the demand in the Saskatoon Service Centre area. Roughly 16 per cent of all foster homes in Saskatoon were overcrowded in June 2008, exceeding the total assessed and approved capacity for these homes by 231 per cent. At the same time, foster homes designated as therapeutic exceeded the total assessed and approved capacity by at least 411 per cent.

While Saskatoon appears to be the extreme example in Saskatchewan, the issue of too many children and too few foster homes appears to be manifesting in other regions, specifically the Regina Service Centre of the Southwest Region, where the response to managing the increased numbers of children coming into care appears to be to place the overflow in hotels, group homes and/or daycares, rather than overcrowding existing foster homes. Ministry front-line staff in Regina have raised this issue with the Ministry through the Saskatchewan Government Employees Union. During the course of this investigation, the Children's Advocate Office had a meeting with the Union leadership, who described the foster care system in Regina as being 'in crisis'. In October, 2008, SGEU raised the issue of overcrowding in Regina in a media release, entitled "Children at risk as foster care crisis escalates," which stated:

Children, from infants to 16-year-olds, are being housed in overflow facilities, such as hotel rooms, a situation that social services staff say is not appropriate and not safe. ...

Social Services staff, from children protection workers to administrative support staff, are now expected to step in to help provide 24-hour care and supervision to children and youth in temporary facilities. ...

Our members are worried, not only about an immediate crisis, but about the long-term impact on children's health and well-being...For example, children, especially very young ones, have emotional attachment needs, which cannot be met when there is a constant turnover of caregivers. Failing to provide appropriate and quality care may result in a growing number of adolescents with serious developmental delays and behavioral disorders....

Requiring staff who work for Family Services to provide on-going care and supervision of children means that they are not able to perform their core work, and the important job of investigations, placements and monitoring remains undone, or is shunted onto other already overburdened workers....

The increase in the number of children coming into the care of the Ministry can, in part, be traced back to government decisions to erode and eliminate preventative programs that provided support to vulnerable families....

This short-sighted approach has not solved the problem. It obviously has long-term consequences and we are just starting to see the beginning of the kinds of problems that emerge when you cut back on prevention.¹⁶⁶

With the public emergence of this issue in Regina and the Minister of Social Services recent public confirmation that the child welfare system, as a whole, is experiencing increasing numbers of children coming into care on a province-wide scale,¹⁶⁷ there are clear indications that the overcrowding in the foster care system in Saskatoon extends to other areas of the province as well. As far back as November 20, 2006, the then Minister of Community Resources told the Saskatchewan Legislature that "...there's significant pressure being placed on the foster care system...and it's something that all of Saskatchewan should know." At that time, the Minister added that, "10 per cent of all houses [foster homes] are overcrowded." More recently, Ministry of Social Services senior managers appeared before the Public Accounts Committee in response to the findings and recommendations of the Provincial Auditor in his *2008 Report–Volume 3*. This report examined the issue of foster home overcrowding province-wide and found:

[T]hat more than half of the foster home files that we examined had periodically more than four children. Of those homes with more than four children, we found that 67% did not have evidence of review and re-approval from senior managers allowing more than four children.¹⁶⁸

In response, Ministry senior managers confirmed that:

[T]here are challenges around the rising number of children coming into the care of the minister, and certainly that has put pressure on the existing resources we have. We do have policies in place that ensures that when more than the recommended number of four children are placed in a foster home that the management, regional management is approving that average.¹⁶⁹

Interviews conducted by the Children's Advocate Office with child welfare services staff, advocates and foster family association representatives in other Canadian provinces revealed that the increased number of children coming into provincial care, and regionalized shortages of foster home placement resources,

¹⁶⁶ Saskatchewan Government Employees Union (SGEU), Media Release, "Children at risk as foster care crisis escalates" (17 October 2008).

¹⁶⁷ On October 17, 2008, the Star Phoenix reported that the Honourable Donna Harpauer, Minister of Social Services, said there are currently 4,200 children in care and there are 800 foster families in the province. Simply averaging these numbers indicates that there are 5.2 children per foster home in Saskatchewan. This calculation does not take into account those foster homes that have been designated as therapeutic, whereby only one or two children should be placed. These numbers far exceed the maximum number of four children to be placed in a foster home according to Ministry of Social Services policy.

¹⁶⁸ Saskatchewan Government Employees Union (SGEU), Media Release, "Children at risk as foster care crisis escalates" (17 October 2008).

¹⁶⁹ *Ibid.*

are not trends found only in Saskatchewan. What is unique, however, is the magnitude of the overcrowding issue in Saskatoon and the Ministry of Social Services' response that has the appearance, over time, of endorsing the practice of placing extreme numbers of children in foster homes in contravention of both Ministry policies and best practices in the field.

While other jurisdictions indicated that they too are having difficulty recruiting and retaining foster parents, they have not allowed the normalization of overcrowding foster homes to become an acceptable solution to the issue. None of the professionals interviewed could recall an instance of overcrowding beyond nine placements in their province, yet in the Saskatoon Service Centre area, Ministry staff have, at times, placed over double that number of children in a single foster home.

6.3 The Problem is Getting Worse

The issue of placing children into overcrowded foster homes is not a recent phenomenon that can be attributed to a specific variable. That is, there was no surge of apprehensions precipitated by a particular set of factors which caused the number of children coming into care to increase. Rather, there was a progressive increase of children coming into care over a period of years without a corresponding increase in placement resources and a parallel number of children leaving care in the Saskatoon Service Centre area.

As early as 2004, Ministry of Social Services managers in the Saskatoon Service Centre predicted the state of the system today and were requesting additional resources to cope with the mounting problem.¹⁷⁰ In early 2007, an immediate need for 130 new foster home placement resources simply to meet the existing demand was identified by managers and communicated to the Ministry.¹⁷¹ Specifically, additional resource spaces were desperately required for children aged 9 to 15. There was, and remains, a significant gap between the number of foster homes approved to accommodate this age group and the total number of children in care in this age group in Saskatoon.

The increase of children in care, the lag in developing new resources, the loss of foster home resources and a lower number of children leaving care have all contributed to the serious predicament the foster care system is experiencing today in Saskatoon. This foster care placement compression in the child welfare system is reflective of Canadian studies, which show that the vulnerable population of children in need of protection is increasing significantly.¹⁷² The corresponding increase of children requiring out-of-home care has surpassed the number of family-based care homes that are available.

In 2007, Ministry of Social Services front-line staff expressed their concerns to Ministry managers:

Staff are deeply concerned about the crisis in the foster care system. Foster homes are overloaded. Policies are being broken regularly, with one home housing 21 children. Concerns have been raised that some foster homes should be protection cases as children are being neglected and abused in care.¹⁷³

In their own words:

"[Overcrowding has] been always there.... The Ministry does not have the best planning framework.... Overcrowding did not sneak up on the Ministry of Social Services."

— Ministry Manager

"Foster homes are in crisis. We have nowhere near enough homes to meet our needs."

— Ministry Front-line Staff Member

¹⁷⁰ *Supra* note 158.

¹⁷¹ *Supra* note 97.

¹⁷² Cheryl Farris-Manning & Marietta Zandstra, "Children in care in Canada: A summary of current issues and trends with recommendations for future research" (2003) CWLA at 2.

¹⁷³ *Supra* note 65 at 9.

Despite the repeated dire warnings from staff and managers in the Saskatoon Service Centre area over the years, the Ministry of Social Services' response appears to have been and continues to be disproportionate to the severity of the overcrowding crisis and the very real impacts it is having on individual children in the care of the Minister.

6.4 The Changing Characteristics of Children and Youth in Care

While some may reference large families as a rationalization for approving multiple placements of children in one foster home, this perception is directly contradicted by the majority of experienced foster parents and Ministry staff who are coping with the intensified and specialized needs of children coming into care and the overcrowding issue on a daily basis.

Seventy per cent of interviewed foster parents in overcrowded homes identified that they have observed that the intensity of damage suffered by children who come into their care has increased in the last decade. These children require more individualized attention from caregivers to monitor behavior and manage the physical, psychological and emotional well-being of the child.

Managers and front-line staff have reported to the Ministry of Social Services similar observations about this intensification of the damage to and behavioral problems exhibited by children in care, in ongoing attempts to secure more resources for the system, foster parents and their own work. In 2007, Ministry managers in the Saskatoon Service Centre identified in budget proposals that there is a high prevalence of mental health issues, Fetal Alcohol Syndrome, violence and aggression, sexual exploitation and addictions found in children and youth coming into foster care. In that same year, the Saskatchewan Government Employees Union reported to the Ministry that front-line staff are:

[F]inding it increasingly difficult to deal with the problems created by poverty, mental health difficulties, addictions and domestic violence. They are often unable to provide appropriate treatment for children due to limited services.¹⁷⁴

Many of the children coming into the care of the Minister today have been victimized to an extent that would confound the general population. Consequently, these children have a higher constellation of needs, which require a higher degree of supervision, care and nurturing in order for those needs to be met.

That the overcrowding issue in Saskatoon is significantly greater in foster homes designated for therapeutic care further reinforces the fact that more and more children require specialized attention to meet or exceed their best interests. Unfortunately for these children, any therapeutic benefit the homes may have had, most notably the reduced ratio of caregivers to children, is immediately eliminated by exceeding the maximum number permitted by policy and the assessed capabilities of these homes to permit one or two placements.

One home visited by CAO investigators had 10 children between the ages of infancy and five in their care on the date of the interview. Six of the children presented with indicators of Fetal Alcohol Syndrome or prenatal drug exposure. One child was developmentally delayed. Six were not toilet trained. One was

In their own words:

"When I first started nine years ago there were a few [children] with behavior problems, now they are more severe. Eight-year-olds pulling their own hair, scratch themselves... five and six-year-olds who hurt themselves... chew toe nails until they bleed."
— Samantha, Foster Parent

"Ninety per cent of the kids in care are therapeutic. Lets be realistic, ADD, FAS, Autistic...it's a full gamut of classifications."
— Leanne, Foster Parent

"Therapeutic homes are a joke because all the children are therapeutic now."
— Lisa, Foster Parent

In their own words:

"We are getting more reactive attachment disorder children than before."
— Amy, Foster Parent

"There are limited placements for our clients, such as people with FASD who have high medical needs and who are violent due to addictions and mental health issues."
— Ministry Front-line Staff Member

¹⁷⁴ *Supra* note 65 at 8.

medically fragile with a shunt in his head and previously, almost died twice due to his medical needs. One was violent and had been sexually intrusive with other children and needed to be consistently monitored.

Another foster home visited by CAO investigators had 10 children deemed by the Ministry of Social Services to be “sexually intrusive” placed in the home. Numerous interviewed foster parents recounted incidents of children being severely victimized prior to coming into care and subsequently engaging in inappropriate sexualized behaviors including fondling, masturbation, exhibitionism, assault and bestiality with family pets.¹⁷⁵

6.5 A Culture of Non-Compliance

The Children’s Advocate Office has raised the issue of Ministry of Social Services’ non-compliance with policy, regulatory and legislative requirements in many reports and for many years. The Office has made numerous and frequent recommendations to the Ministry for improved quality assurance in this regard.

It is the Children’s Advocate Office’s position that policies are a benchmark that reflects best practices. If a policy is reflective of best practice, Ministry of Social Services personnel should be adhering to those policies as the minimum standard to be reached in all cases, not a standard that is malleable, optional or unnecessary. If a policy does not reflect best practices, then it should be promptly reviewed and revised in order to do so. In the case of Ministry policy on the maximum number of children in a foster home, even the majority of foster children who were interviewed as part of this investigation were able to articulate that an ideal number of children in a foster home should be four or five.

In their own words:

“They [Ministry of Social Services] are putting kids in homes that can’t cope, that are more than they have been approved for.... No, it’s not black and white. It’s assessed at the home study stage, but they don’t follow that assessment. There are homes that can only take one; there are homes that can take more. The need of the children and abilities of the home need to be assessed on a case-by-case basis.”

— Lisa, Foster Parent

The Ministry of Social Services has known for over 22 years that there exists a culture of non-compliance with policy within varying sectors and offices of the child welfare system. The Provincial Auditor, the Provincial Ombudsman and the Children’s Advocate have repeatedly and frequently indicated during this period that non-compliance with Ministry policy is a significant issue that has put Saskatchewan children at risk of harm, and even death. The Children’s Advocate Office’s experience in this investigation, the Karen Quill investigation and 128 subsequent child death reviews, collectively reinforces the conclusion that while lack of compliance with policy may appear on the surface to be merely a performance management or administrative issue, it is, in fact, a severe symptom of an ailing system.

Whatever the cause of non-compliance is, Ministry of Social Services staff overlooking or disregarding policy has become an enduring legacy that has been oppressive to more than a generation of children who have come into the care of the Minister. That the Ministry continues this non-compliance when placing children and foster parents at increased risk of physical, sexual, psychological and emotional harm by overcrowding foster homes in the Saskatoon Service Centre area is unreasonable and wrong.

6.6 Managing Numbers, Not Cases

Consistently and habitually, the Saskatoon Service Centre has operated in a manner that allows and, in some cases, requires Ministry front-line staff to place children in foster homes without conducting the required assessment and documentation of the child’s needs, and placement matching with the capabilities of the foster home. Furthermore, CAO investigators found no evidence in the 13 overcrowded foster home files they reviewed that any of the required approvals from Regional Managers to exceed the maximum number of children were secured, documented, or reviewed every two weeks per policy.

¹⁷⁵ In one case recounted by a foster parent, a young girl who was placed in her care was found having sex with their German Shepherd. In another case, a six-year-old girl who had been raped and bitten all over her body was placed in a new foster home that could not cope with child’s subsequent Post Traumatic Stress Disorder. This child’s placement broke down and she was subsequently uprooted once again.

The ever-increasing gap between the number of children coming into care and the lack of foster homes or alternative placement resources in the Saskatoon Service Centre area, has driven Ministry front-line staff and managers to make placements in emergency, short term or therapeutic foster homes, which exceed the assessed capabilities of the homes to provide the appropriate supervision, care and nurturing to meet the needs of the children.

Non-therapeutic foster homes that have been assessed for up to four children, and therapeutic foster homes assessed for one or two special needs children, have been asked, without proper re-assessment of the physical accommodations or consideration of the short or long-term effects on the children already living in the home or the foster parents, to take in more placements simply because they may have an extra bed, couch, sleeping bag or floor space.

Placement of children into foster homes based on such rudimentary criteria indicates that the Ministry is not endeavoring to meet or exceed the best interests of children. The placement of children into overcrowded foster homes in the Saskatoon Service Centre has become a “numbers game” as Ministry front-line staff try to cope with an astonishing lack of placement resources available in the area.

When foster parents resist additional placements, Ministry staff have resorted to manipulating, bullying or tricking foster parents into taking more and more children with very few additional or appropriate supports available from the Ministry of Social Services to help these parents cope with the unique, complex needs of each child, and the new dynamic that is created within the home with each additional placement.

In some cases, foster parents in emergency or short-term homes have become long-term caregivers without ever having the opportunity to plan for or agree to this happening. While some children and foster parents do benefit from and wish to continue their parent/child relationship beyond the initial properly assessed and contracted time period defined by those specialized designations, other foster parents and children are suffering from the uncertainty, disappointment, fear and frustration that these inappropriately matched placements produce.

CAO investigators found evidence that the lack of required assessments and placement matching that is endemic to overcrowded foster homes in the Saskatoon Service Centre area has led to placements breaking down and the unnecessary moving or running away of children. Rather than providing a stable family environment to facilitate the healing and development of children, overcrowded foster homes are further debilitating children beyond the neglect, maltreatment and abuse suffered in the parental home. That children do not feel safe in overcrowded foster homes is unacceptable and wrong.

In their own words:

“What’s terribly wrong is taking six [teenage] offenders and putting them in a home with two and three-year-olds in them.”

— Karen, Foster Parent

“I have felt very pressured [to take additional children].”

— Della, Foster Parent

“It would be nice if they tried [matching placements], but they don’t even try.”

— Anne, Foster Parent

In their own words:

“I’ve had it easier than others because I haven’t moved a lot and basically have a family.”

— Cindy, 17

“Children should only get moved once because it is kind of hard to fit in a foster home once.”

— Brian, 15

“I don’t know why I moved, but I would rather have stayed here and not moved between foster homes.”

— Sean, 9

6.7 Non-Disclosure of Information

The lack of assessment and placement matching is compounded when Ministry of Social Services front-line staff do not document and/or inform foster parents about the case histories and needs of children placed in overcrowded homes. Failing to disclose information that would assist foster parents in meeting the needs of the child is a serious issue; however, even more disturbing is the fact that CAO investigators found evidence that Ministry front-line staff were withholding information that could have protected foster parents and other children placed in the home from physical, sexual, psychological and/or emotional harm.

It would be unreasonable and wrong for this failure to disclose this type of information to happen just once; yet accounts and evidence of non-disclosure by Ministry staff were revealed over and over again during this investigation. Beyond being entrenched in policy or demonstrating best practices, it is simply common sense which dictates that foster parents should be informed with as much information as possible in order to protect and serve the children for whom they care.

That foster parents are finding out after-the-fact that the Ministry of Social Services was aware of information that could have prevented incidents of harm from happening to either themselves or other children in the home is unreasonable and wrong. In these instances, trust between the foster parents and the Ministry is irrevocably broken leading to ongoing strain in this integral relationship and in some cases the severing of ties and withdrawal of services by the foster parents altogether.

For the foster parents who remain, they are left feeling disrespected, threatened and powerless to address issues within the system. If they speak up too loudly, they fear that they will be emotionally punished by having children they have grown to love moved to another foster home or financially punished by having children removed from their care after they have devoted their lives to being a full-time foster parent.

In their own words:

"They lie! They beat around the bush and don't tell you what's wrong with the children. You need to press them for information on the child and almost threaten to take the child back to them if they don't give you the information. The blue books never have any information regarding the child's behaviors filled out."

— Julia, Foster Parent

"They give you sketchy information. They don't want to turn you off. They will deliberately withhold information. This definitely compromises the safety of the other children."

— Samantha, Foster Parent

"I once found out that information I'd written in the blue book had been taken out. They take out any documented concerns. They make up new ones with no information."

— Anne, Foster Parent

"They think of safety last. They find a home, place the kid and deal with it Monday."

— Dawn, Foster Parent

6.8 Losing Track of Children

Fundamental to supporting and protecting children in care of the Minister is the ability to know to whom, what, where and when services are being provided. The child welfare system is legally, ethically and morally responsible and must be accountable for all children in the care of the Minister.

The Ministry of Social Services information resource management policies and systems, whether they are paper-based or electronic, are important tools of case planning and case management for each child or youth in the system.

The Children's Advocate Office encountered problems when requesting information from the Ministry of Social Services during the course of this investigation. In several instances, the information was unavailable due to lack of retention or the fact that it was not collected or recorded in the first place. This included the Ministry not being able to provide information on:

- Average caseloads for front-line child protection workers either provincially or in the Centre Region.
- Average length of stay in care for all children in care provincially, for all children in foster care

provincially, for all children in care in the Centre Region and for all children in foster care in the Centre Region, and how this compares with other Canadian jurisdictions.

- Average frequency in the change of workers for children in care provincially, for all children in foster care provincially, for all children in care in the Centre Region and for all children in foster care in the Centre Region, and how this compares with other Canadian jurisdictions.
- Average frequency of contact between child protection workers and foster parents provincially and in the Centre Region, and how this compares with other Canadian jurisdictions.
- Percentage of time spent by child protection workers provincially and in the Centre Region in direct client contact, in clinical supervision and in preparing documentation, and how this compares with other Canadian jurisdictions.
- Percentage of compliance with Ministry policy by child protection workers provincially and in the Centre Region, and how this compares with other Canadian jurisdictions.
- The exact number of active foster homes and their location in Saskatchewan.

In December 2008, the Provincial Auditor observed this issue in his own examination of the Ministry of Social Services and recommended that the Ministry implement a system to know how many children are the Minister's responsibility, who they are, and where they live. This would include children in the care of the Minister who are placed under First Nations' children and family services agencies.¹⁷⁶

In the past and during this investigation, this issue of information not being available or tracked by the Ministry of Social Services has presented challenges to the Children Advocate's Office's evaluation of certain services, programs or the number of children in care, and raises concerns that they are being set adrift in the system without any accountability or attention to individual needs. Not only can children become mere statistics once they enter the child welfare system, they can also go uncounted and consequently unmonitored, unattended and unnoticed as they stay in or move out of the care of the Minister.

For example, the Ministry's weekly reports of overcrowded homes in the Saskatoon Service Centre area are generated by calling the overcrowded homes to find out who and how many children are placed in each home rather than relying on the Ministry's own computer database. These phone calls baffled the foster parents because it was apparent that the Ministry did not know who or how many children were in their homes. However, this does not baffle the Children's Advocate Office, as it is the Office's experience that so much of the information requisitioned during this investigation was unavailable due to the Ministry's lack of centralized computer tracking.

Without baseline information about children in care being tracked, monitored and assessed, the Ministry of Social Services cannot possibly have the ability to engage in introspection, learn from their mistakes or evaluate the real needs of children in this province today or anticipate those needs in the future. That the foster home overcrowding crisis in Saskatoon has emerged and the Ministry has not been able to provide a cohesive plan to address it, is no surprise to the Children's Advocate Office in light of the fact the Ministry cannot access and compile the most basic of information on the children in its care.

The Children's Advocate Office is aware of a project, as also noted in the Auditor's report, which was announced by the Ministry of Social Services in March 2008 to develop a new electronic system to manage and track children in care. The timeline for development has been stated as three years.

It is clear that the Ministry of Social Services' issues and challenges with information resource management extend far beyond the need for better electronic database systems. The Ministry has not responded in a timely, nor comprehensive manner, to improve information resource management paper-based and/or electronic systems, or to cultivate a workplace culture where Ministry front-line staff and their managers are encouraged to value this element of their work and are afforded the time and resources required to complete it efficiently. That children in the care of the Minister are not having their needs met because of the Ministry's inability to track information about them, is unacceptable and wrong.

¹⁷⁶ Legislative Assembly of Saskatchewan, *Report of the Provincial Auditor* (2008).

6.9 Placing Children and Foster Parents at Risk

Consistently and habitually, the Saskatoon Service Centre has operated in a manner that allows and, in some cases, encourages placement of children in foster homes that are non-compliant with Ministry of Social Services policy standards for physical accommodations, as defined in the *Residential Care Services: A Building, Health and Safety Guide*. This practice breaches the legislated duty of the Minister to ensure the safety and well-being of these children by placing them at risk of further physical, sexual, psychological and/or emotional harm once they are admitted into care.

Ministry of Social Services staff have not communicated, reviewed or enforced the requirements of the *Guide*, which has resulted in foster parents not being properly educated, advised and assisted in a way that would facilitate compliance and ensure healthy and safe living conditions for children in the care of the Minister. Upon inquiring about the *Guide* to Ministry staff and foster parents, CAO investigators found a universal lack of awareness, let alone any demonstrated use.

The Foster Home Safety Check List used by Ministry staff and the limited time required to complete it to assess a foster home's physical accommodations is incompatible with the Provincially developed detailed requirements of the *Residential Care Services: A Building, Health and Safety Guide*. Furthermore, CAO investigators found no evidence that re-assessments of the physical accommodations of foster homes were being completed when placing additional children.

All of the overcrowded foster homes visited during the course of this investigation were found to contravene two or more areas of the minimum requirements of the *Guide*. Notably, 70 per cent of these homes did not have the physical capacity to meet the specifications regarding bedrooms. This directly correlated to the fact that the homes exceeded the maximum number of permitted placements, as defined by Ministry policy and assessed at the time of the initial home study or annual review.

CAO investigators found bedrooms that exceeded the maximum of two occupants per room and were too small for the number of occupants. Some foster homes used unapproved areas of the homes such as passageways and common areas for sleeping. Foster parents interviewed indicated at times, that they had heard of circumstances in some foster homes where it was required that up to six children sleep in one bedroom or that children sleep on a couch, the floor or share a bed.

While on its face, non-compliance may appear to be a reflection of the standard of care created by a particular foster home, it is more accurate to conclude that the root cause of the non-compliance with policy and elevated level of risk to the children and foster parents in these homes was the simple fact that there was, and still are not enough, out-of-home care resources available to safely accommodate the numbers of children coming into care in the Saskatoon Service Centre area.

Ministry of Social Services front-line staff, influenced by the volume of overflow in the system, have, at times, inappropriately pressured foster parents to take another child even though they know there is not even a bed available in the home. Many foster parents want to help as many children as they can or feel threatened by caseworkers to accept more children even where there are inadequate physical accommodations. For the Ministry of Social Services to allow the overcrowding situation to develop in Saskatoon so as to place the caseworkers, foster parents and children in this position is unacceptable and wrong.

6.10 Harming Children in Care and the Need for Permanency Planning

As recounted in this Report, CAO investigators have read in foster home case files and heard from foster parents and children a series of incidents where children placed in overcrowded foster homes were physically, sexually, psychologically and emotionally harmed by those placements. The Ministry of Social Services' failure to protect children in its care from harm is unacceptable and wrong.

The CAO investigators found 18 incidents of child-on-child violence in eight of the 13 overcrowded foster homes it reviewed. None of these incidents were investigated or recorded by the Ministry of Social Services as serious case incidents and in none of the cases did the files indicate that the families of origin were informed that the incidents had occurred. Further, the Children's Advocate Office found that

Ministry front-line staff, the individuals who are recording these incidents in the files, were concerned that although they reported these allegations all the time, nevertheless the Ministry of Social Services was not investigating them.

The Children's Advocate Office is particularly disturbed by one foster home file where it was documented that Ministry of Social Services front-line staff were well aware that a 17-year-old sexually-intrusive girl was to share a bedroom with a 12-year-old girl, and that the 17-year-old had to be told on a daily basis that "she can hug...but touching the other children in any way is inappropriate." If a proper assessment and placement matching of the 17-year-old girl's needs with a therapeutic foster home with only one or two children in single bedrooms had been conducted, the 12-year-old girl would have been protected from the inevitable sexual assault. Instead the 17-year-old was placed not once, not twice, but three times in overcrowded foster homes, all of which clearly did not have the proper, constant supervision available to meet her needs and protect the other children placed in these homes.

If this were a single incident, that would be bad enough. However, the cases where CAO investigators found Ministry staff must have, or should have, known that there was a risk that children or foster parents could suffer harm from a child who was inappropriately placed in an overcrowded foster home were disturbingly frequent. Ministry staff focused on managing "numbers" of children, rather than the cases of individual children and matching them to foster homes that were capable of serving their individualized needs.

Ministry staff also abdicated their responsibility to first and foremost protect the children in care by failing to adhere to Ministry policy or best practice in the field when overcrowding these foster homes. Instead, in some cases they have deferred to a foster parents' wishes and requests to take in more children or, more often, failed to properly match children with the capabilities and capacity of foster homes. Often the foster parents themselves do not even know how many children they are approved to take such as the case of a foster parent who had 15 children placed with her; however, her home study approved her for one child only.

Time and time again, CAO investigators found instances of Ministry staff placing children in unacceptable circumstances, and time and time again, children were harmed as a result. When the CAO investigators were initially told that Ministry staff told a foster parent that, "A certain amount of sexual abuse is to be expected in a foster home," it was hard to believe that a child protection worker would make such a statement. However, during the course of this investigation, the frequency by which such concerns were documented in the Ministry files and recounted by foster parents made this statement more believable.

The Ministry's lack of adequate response to sexual intrusiveness of children, failure to provide information about the nature and extent of offending risk, and choice of placements of intrusive children with younger or vulnerable children, demonstrates a regional attitude which accepts that harm to children in overcrowded foster homes may be inevitable. It is unacceptable and wrong for the Ministry of Social Services to allow staff to disregard policy or best practices under any circumstances. It is not the children's fault that the system is overloaded and it is not the children's fault that the Ministry has not responded with the vigor required to develop adequate foster home resources in the Saskatoon Service Centre area. Yet it is the children in the care of the Minister who pay the price.

In their own words:

"When you take fire setters, porn seekers, masturbators and place them with a slow child, you're placing that child at risk."

— Karen, Foster Parent

"I feel safe when I'm in bed. Everyone is quiet and the locks are on....Last year a foster child or two caused a house fire. That was really scary."

— Mary, 16

In their own words:

"It doesn't feel safe in this room with [Bobby]... I feel very, very unsafe because of the punching, hitting, kicking and biting...."

— Cam, 8

"Children get hurt more when there are lots of kids [in a foster home]. I don't feel safe because other children hit or kick me. This wouldn't happen if there were fewer children."

— Cindy, 17

If children placed in overcrowded foster homes do not feel safe and if they are not given enough one-on-one care and attention, they cannot possibly be expected to heal from previous neglect, maltreatment or abuse; develop physically, mentally or behaviorally; or form the attachments to caregivers, families, and their culture and communities that are so integral to the healthy development of self-esteem and self-identity. Children who are warehoused in overcrowded foster homes are simply stored in the system; they are less likely to successfully progress developmentally, and certainly have less of an opportunity to break the cycle of oppression they were born into.

Of significant concern to the Children's Advocate Office is that the requirement for permanency planning for children in care, which needs to occur within a "brief, time-limited period"¹⁷⁷ and "minimizes the length of time that a child will live in a setting that lacks the promise of being permanent" is not regularly occurring.¹⁷⁸ The CAO investigators' examination of overcrowded foster homes revealed that there remains an issue, first identified by the Children's Advocate Office in 2000,¹⁷⁹ that within the Saskatchewan child welfare system, children are languishing in care and not receiving the benefits of systematic planning or case management processes that emphasize regular reviews, contacts and decision making. Key to this permanency planning is the active collaboration among key community agencies, childcare personnel, lawyers, judges and others working with children and their parents.

Historically, permanency planning alternatives consisted of the biological family or closed adoptions. Permanency planning has evolved beyond these parameters with options such as kinship care, customary care, guardianship care, custom adoption, and open adoption. This more expansive permanency continuum needs to be further explored in this province to provide consistency, and offer permanence for children. Children are entitled to permanency planning through detailed case work on an individualized basis throughout their exposure to the child welfare system, and must be considered the primary client in any planning. As Judge Thomas Gove wrote in his British Columbia "Report of the Gove Inquiry into Child Protection:"

The province needs to be clear that the child is the paramount client of the child welfare system. It needs to reflect this 'child-centredness' in legislation, training, policies, case supervision, case practice and advocacy. Doing so will demand that child welfare organizations act with undivided loyalty to the child, making choices based on what is best for the child. Such decisions might include assisting parents and other caregivers, when such assistance fosters the child's safety and well-being. Sometimes, it will mean removing the child.¹⁸⁰

In order to address both the foster care compression currently taking place in the Saskatoon Service Centre area and the best interests of children in care, the Ministry of Social Services must expand the range of permanency options for both alternative out-of-care and in-care placements. The narrowness and rigidity of the legislated options is forcing too many children into care and keeping them there for far too long before any permanency planning decisions are required to be made. It is important to find ways to reduce these limbo periods where children are simply being warehoused and to create shorter cumulative maximum time periods for children in care based upon age delineation.

As well, the Ministry could and should access the expertise and resources of the Federation of Saskatchewan Indian Nations, the Métis Nation-Saskatchewan, the Saskatchewan Children's Advocate Office, current/former youth in care, and other relevant sources to develop and implement a plan that would focus on creating a safe and nurturing foster care system dedicated to promoting the best interests of children in care. A Special Committee on Foster Care and Permanency Planning, which would include such representation, who would make specific recommendations to improve the system for children, similar to the all party committee on the sexual exploitation of children, must be considered.

¹⁷⁷ Fein, Maluccio, Hamilton & Ward (1984) in Children's Advocate Office, *Beyond 'at Risk' Children Systemic Issues Report regarding Sexually Exploited Children & Oyate Safe House* (September 2006) at 24.

¹⁷⁸ Cohen & Westhues (1990) in Children's Advocate Office, *Beyond 'at Risk' Children Systemic Issues Report regarding Sexually Exploited Children & Oyate Safe House* (September 2006) at 24.

¹⁷⁹ *Supra* note 142.

¹⁸⁰ Thomas Gove (Judge), British Columbia Report of the Gove Inquiry into Child Protection, Volume 2, (Matthew's Legacy), (Ministry of Social Services, 1995) at 245-246.

6.11 The Loss of Connection to Community and Culture

The Children's Advocate Office has previously reported on the serious and systemic problem of the over-representation of Aboriginal children in child welfare care in Saskatchewan. The issue was again affirmed during our investigation, as over 66 per cent of all children in the care of the Minister placed in overcrowded foster homes in the Saskatoon Service Centre area are of Aboriginal ancestry. Out of this total number, 63 per cent of these Aboriginal children are of First Nations descent.

The Child and Family Services Act stipulates that when a person or court is required by the Act to determine the best interests of a child, he or she shall take into account a number of considerations, including: "the child's emotional, cultural, physical, psychological and spiritual needs."¹⁸¹ As well, the Act further stipulates that in any situation where residential services are being arranged for a child by a child protection officer, or the Court, the officer or the court, as the case may be, shall, "having regard to the best interests of the child, (a) consider the feasibility of placing the child with a member of the child's extended family; and b) where practicable, attempt to maintain the child in an environment that is consistent with the child's cultural background."¹⁸²

Further, Article 30 of the United Nations *Convention on the Rights of the Child* states that:

In those states in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

To better understand the impacts overcrowding has on children in Aboriginal communities, the Children's Advocate Office discussed the foster home overcrowding issue with Aboriginal foster parents, community workers, and leaders of the Federation of Saskatchewan Indian Nations (FSIN) and the Métis Nation–Saskatchewan. During these information discussions, specific concerns were raised regarding the ability of Aboriginal children to access cultural and spiritual activities, as well as to maintain contact with extended family and community. The President of the Métis Nation warned of the potential for a "cultural genocide" when children are in care and lose their connections.

When there are too many children placed in a foster home, it is evident that all of these children's needs, including their cultural, linguistic and spiritual needs, are more likely to be given less consideration and attention. This can be particularly detrimental to those children who come from families who speak their language and are engaged in their cultural activities and ceremonies. Children already experiencing separation anxiety by virtue of being disconnected from their family, relatives and their community, can be further harmed when also separated from their culture and language. As stated elsewhere, it is essential for Aboriginal children to be placed in an environment where their "safety, protection and best interests can be met, but in a manner that honours their cultural and linguistic distinctiveness."¹⁸³ While it is, of course, optimal for Aboriginal children to be placed with Aboriginal foster families, some non-Aboriginal foster parents take Aboriginal children placed in their homes to cultural events and take classes to learn the language of the children in their care.

Comments by First Nations foster parents identified that there was no overcrowding in foster homes administered by First Nations child and family services agencies. This is in contrast to what has been occurring in the Saskatoon Service Centre area. One foster parent, who had experience with both the provincial and agency systems, advised that foster parents were treated differently in those two systems. Foster parents in attendance confirmed what was heard in other interviews, namely that in the Ministry foster care system, there was a lack of respite care; turnover in Ministry caseworkers; fear of retaliation upon raising issues; and a lack of proper placement matching, case planning, respectful communication and teamwork between caseworkers and foster parents.

¹⁸¹ *Supra* 14 at s.4(c).

¹⁸² *Ibid.* at s.53.

¹⁸³ Regina Leader Post, Opinion Editorial, "Yellow Quill tragedy a call to action" (13 February 2008).

Furthermore, there were concerns expressed by foster parents and community workers regarding the inequity between the Ministry of Social Services' administered foster care system and those administered by First Nations child and family services agencies. This included service, funding and resource inequities, as well as the observation that the two parallel systems have, at times, had difficulty working together or communicating information.

One FSIN Vice-Chief in attendance succinctly emphasized that now was the time, with Saskatchewan's economy growing, that "action items should be put into place..." regarding investing in foster parents and the system from "beginning to end." This is particularly the case, when one considers that Saskatchewan's Aboriginal population is projected to grow significantly in the future. As has been stated within the Children's Advocate Office, "we must form a circle around the child." Clearly, the focus must always be on children first, while maintaining these connections with community and culture.

In their own words:

"I'm English and Irish."

— Martin, 9 (Métis)

"Some people ran from there because they were not allowed to see their family."

— Cindy, 17

6.12 The Institutionalization of Foster Care

The Ministry of Social Services has advised the Children's Advocate Office that they have attempted to manage the overcrowding situation in Saskatoon by providing money to foster parents to hire "staff" or "home-help" to assist the foster parents to provide care for the excessive number of children. Ministry staff reported that "home-help" staff were provided to assist the foster parent in supervising and caring for the children in the home.

One foster parent who operates an overcrowded foster home with hired home-help reported that they felt that they were not in a home but an institution, with their role as a foster parent being replaced for that by a Director of a program, responsible for not only the children in their care, but also the management of staff and a program. The Ministry of Social Services needs to stop turning foster homes into de facto "institutions" by endorsing overcrowding and compensating foster parents to hire home-help. If the Ministry wants to create facilities for children, then set them up as such, but regulate them and provide the proper resources and supervision that is required of other child care facilities.

In their own words:

"What we are doing with children in overloaded homes is worse than institutionalization. If you are institutionalized you stay in one place. These children are on the move. My first foster child was in 22 homes in 24 months."

—Karen, Foster Parent

The former Ontario Children's Advocate released a report with the main finding of her review of the residential care system being that children in care fare best in a family type environment:

The most compelling conclusion in this review is the importance of "family-like" environments in creating positive outcomes for young people in care. The desire for home like environments was evident in the words of both the young people and the foster parents alike.¹⁸⁴

By placing more children in foster homes than would be permitted in a licensed, staffed, regulated and monitored group home, the Ministry of Social Services is allowing the foster care system in Saskatchewan to become institutionalized with children becoming residents of facilities that are not required to meet institutional standards of care. The trend towards institutionalized foster homes is unacceptable, wrong, and not in the best interests of children in the Minister's care.

¹⁸⁴ Office of Child and Family Service Advocacy, *We are Your Sons and Daughters* (Ontario: June 2007) at 4.

The preamble of the United Nations *Convention on the Rights of the Child* states clearly that:

[T]he child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

This moves the Province's obligation far beyond the minimum level of protection services, which provide for survival, to an expectation of a higher 'best interests' philosophy. Children are entitled to more than just survival; they are entitled to optimal child development.

Regrettably, the level of service provided to Saskatchewan children is not regulated and goes unchecked as the Ministry of Social Services advised the Children's Advocate Office that they "do not subscribe to an accreditation service for any of its mandated services to children and families."¹⁸⁵ The decision not to pursue accreditation suggests that, establishing, maintaining and measuring the quality of service provided to children does not seem to be a priority of the Ministry of Social Services.

6.13 It is the Time to Legislate and Regulate

It would be hard to find any citizen of Saskatchewan who would argue that children should not be protected from situations where their parents, guardians or caregivers have placed them at risk. The scenario is significantly more concerning when it is the actions or inactions of the State acting as parent of an already vulnerable child, which is responsible for placing children at further potential risk.

This investigation into foster home overcrowding in the Saskatoon Service Centre area has once again revealed a blatant and serious disregard for the standards contained in Ministry of Social Services policies related to the protection and provision of services for children in foster care. A decade after the death of Karen Quill, foster children are still being placed at risk of physical, sexual, psychological and/or emotional harm because of the actions or inactions of Ministry staff and managers.

Placing standards of care into policy rather than regulations or legislation has significant implications regarding adhering to the benchmarks established by the Ministry of Social Services. The most important implication is that the Ministry or its delegated agents are not compelled to follow policy, as there is no legal force behind it. Contrasted with regulations or legislation for which there is a legal obligation for the Ministry or its delegated agents to abide, standards which are grounded in policy merely state the level of service or care required, but there is nothing that necessitates government or the service provider to follow them.

In October 1981, the Ministry of Community and Social Services in Ontario initiated a community consultation to establish standards and guidelines for agencies placing children in care. The consultations were designed to determine what the essential practices and minimum levels of service should be in foster care. Through the work of the consultation group, some of the proposed standards were considered for inclusion as regulations in *The Children's Residential Services Act*.¹⁸⁶

Today in Ontario, standards such as the maximum number of children in a foster home are found in regulation and are not to be exceeded.¹⁸⁷ With limited exceptions, overcrowding does not occur. It does not mean that there are not challenges to meeting the need to place children in appropriate care homes or settings; however, it reflects a decision to keep the number of children in a foster home to a level that has been determined to be in the child's best interests and consistent with established best practices.

In contrast to the Ontario example, Saskatchewan foster homes are regulated by policy contained within the *Children's Services Policy and Procedures Manual*, which describes the process used to approve foster homes, how many children are to be placed in a home, foster care rates, and many other requirements of providing for the well-being of children in care. However, there are no legal requirements to enforce the policies and, as has been demonstrated consistently and frequently in the past and throughout this

¹⁸⁵ Letter from Duncan Fisher, Deputy Minister, Community Resources, to Marvin Bernstein, Children's Advocate (8 August 2007) at 2.

¹⁸⁶ *The Residential Services Act*, S.S. 1985, c.R-21.2.

¹⁸⁷ *The Child and Family Services Act* R.R.O. 1990, Regulation 70, Foster care at s. 117(1)-(2). See also the *Manitoba Child and Family Services Act* C.C.S.M.c.C80 at s. 8(1) and *The Child and Family Services Act Foster Home Licensing Regulations* 18/99 at s.7.

investigation, there is nothing entrenched in the Ministry of Social Services' workplace culture to expect, encourage, monitor, manage or enforce the adherence to these policies.

The Saskatchewan Children's Services policy standards for foster care are at odds with *The Residential Services Act*, whereby a license to operate a residential services facility that accommodates more than three residents, or a private services home which provides accommodation to five or less persons is required. If the operator of the residential facility or private services home does not meet the requirements of the license and/or regulations, the Minister may revoke or suspend the license to operate.¹⁸⁸ In Section 2(h) of *The Residential Services Act*, the government has explicitly excluded itself from regulation where the section states that a residential-service facility:

[D]oes not include day care centres, approved homes as defined in *The Mental Health Act*, facilities designated as Special-Care Homes pursuant to *The Regional Health Services Act*, or other homes or facilities under the jurisdiction of any other department or agency of the Government of Saskatchewan.¹⁸⁹

*The Mental Health Services Act*¹⁹⁰ and *The Regional Health Services Act*¹⁹¹ have regulations that require standards of care in order to obtain and maintain a license to operate. There are no corresponding regulations that apply to foster homes.

In jurisdictions where strict licensing regulations are required of foster homes, such as Ontario, Alberta and Manitoba, the rare exceptions to exceeding the numbers approved for placement in a home as part of that licensing would be for sibling groups. In Ontario, permission to exceed the regulations in those cases would have to be obtained from a Regional Director.

6.14 Solving the Overcrowding Crisis in Saskatoon

In 2005, Manitoba launched an initiative to reduce the number of foster child placements in hotels that included the "Join the Circle of Care" campaign designed to establish 300 beds in new foster homes. Within two years, this campaign exceeded that target by 200 beds and in September 2008, the number had reached 1,000 new placement resources. The Circle of Care campaign was one step in the Changes for Children strategy launched with an initial commitment of \$42 million to strengthen Manitoba's four child and family services agencies, followed by another \$6.1 million to increase funding to the province's foster care system.

Alberta has also made a concerted effort to recruit and retain new foster families to deal with the rising numbers of children coming into care. One strategy Alberta developed to retain new foster families was to introduce limits on the number of children placed in their care during a probationary period. This period allows for the foster parents to receive training and adjust to the new reality of caring for children who have been victims of neglect, maltreatment or abuse, without creating additional undue stress by placing unmanageable numbers of children into one foster home.

The Children's Advocate Office has identified these examples in order to demonstrate that there are successful instances of provincial governments overcoming the challenge of recruiting and retaining new foster families right next door to Saskatchewan. Why the Ministry of Social Services cannot replicate this type of success in the Saskatoon Service Centre area is readily apparent to the Children's Advocate Office. Simply stated, Ministry staff, at all levels, appear to be demoralized, in conflict and/or under extreme stress. In many cases they are not achieving a minimum standard of care for the children placed in overcrowded foster homes, let alone striving to change a system that has become so clearly deficient in supporting children in care, foster parents and themselves as they carry out their work.

CAO investigators found that a sense of malaise and frustration permeated the responses of Ministry of Social Services staff and managers to their inquiries. This perception of Ministry staff has been reinforced through the years of daily advocacy work done by representatives of the Children's Advocate Office, and

¹⁸⁸ *Supra* note 186 at s.10.

¹⁸⁹ *Ibid.* at s.2(h).

¹⁹⁰ *The Mental Health Services Act*, S.S. 1986, c.M-13.1

¹⁹¹ *The Regional Health Services Act*, S.S. 2002, c.R-8.2.

in previous child death reviews and investigations. The Office's collective experience is that it takes an especially horrific or public event for Ministry of Social Services to take action, but that as soon as the furor dies down, the same old habits of non-compliance with policy emerge.

Ministry staff reported to the former Minister of Community Resources in August 2007 that their ability to do their jobs to a satisfactory degree of accountability and compliance is completely compromised by work overload.¹⁹² Those Ministry staff who either freshly enter the workplace or retain their sense of duty and fulfill their responsibilities to the best of their abilities despite the shortcomings of the system, may be marginalized in the workplace or burn out and become so frustrated that they leave the Ministry or transfer out of the area. The high rates of turnover in Ministry staffing in the Saskatoon Service Centre is an indicator that there is something significantly wrong with the Ministry culture.

Foster parents repeatedly reported that Ministry staff often acted condescendingly and contemptuously towards them, creating a culture of distrust between the Ministry and caregivers that has directly affected the well-being of children in care. Until the role and responsibilities of the foster parent as part of the case management "team" are acknowledged and official forums for mediation between foster parents and the Ministry of Social Services are created, more and more foster care resources will be lost, as foster parents retreat from this often demoralizing, destructive and desperate situation.

Contributing to this culture, is the fact that for years Ministry staff and managers in the Saskatoon Service Centre have been raising issues related to the foster care system with the Ministry of Social Services, only to be rebuffed and required to make do with the inadequate resources allocated to the region. That the Ministry has neglected the condition of the foster care system in Saskatoon so as to allow staff to feel unsupported, both in terms of financial and human resources, is unacceptable and wrong.

The Children's Advocate Office understands that solving foster home overcrowding in the Saskatoon Service Centre is a formidable task. It will take hundreds of hours of human resources, the ongoing maintenance and rebuilding of positive relationships between foster parents and Ministry staff, and a level of acknowledgement and support never before seen from the Ministry of Social Services. The Manitoba example shows that this issue can be solved; there just needs to be the collective political and administrative will to do so.

6.15 Saskatchewan Children Need Access to Justice

Unfortunately, there are very few entitlements that are set out as positive rights for children receiving services from, or in the care of, ministries and agencies of the Provincial Government. In point of fact, most of the rights and entitlements of children are derivative from the obligations imposed upon parents, guardians, caregivers, Ministry staff, courts and other decision-makers.

As previously mentioned in the Children's Advocate Office's Oyate Systemic Issues Report:

[T]he best way to achieve this [i.e. a child-centred approach that supports early and decisive intervention and a stronger commitment to achieving permanency in the child's life] is through the introduction into Saskatchewan's Child and Family Services

In their own words:

"We are harassed. They call at 4:30 and they'll call and nag and nag and nag. They tell us to stop doing what you are doing and come and get them [the children]."

— James, Foster Parent

"I know of one foster home that is moving to North Battleford so the Ministry will stop bugging her to take more kids."

— Leanne, Foster Parent

"The worst problem is that you take the training that says you work as a team. Then you get some workers who just tell the foster parents what to do."

— Julia, Foster Parent

"I've gone through a lot of workers... 10-15. They are supposed to be a person to trust."

— Cindy, 17

¹⁹² *Supra* note 65.

Act of a list of guiding principles, a list of service delivery principles and a code of children's rights and entitlements – an approach which has been taken in many other jurisdictions.

In the guiding principles, there would be a catalogue of relevant considerations, which would be read subject to the paramount purpose of the “best interests” of the child. This is the approach taken in British Columbia, Manitoba, Newfoundland, Nunavut, Ontario and Prince Edward Island.¹⁹³

While many of the provincial and territorial legislated guiding principles also subsume both service delivery principles and explicit rights and entitlements of children, there are some that enumerate a separate set of service delivery principles, with the common objective of reinforcing the government's obligations to provide services in a respectful and culturally sensitive manner that optimizes maximum participation and representation for both children and their families. This is the approach taken in Newfoundland, Ontario and Quebec.¹⁹⁴ As well, *The British Columbia Child, Family and Community Services Act*¹⁹⁵ sets out a series of instructive service delivery principles that are culturally sensitive and reflect the active participation by Aboriginal communities in respect of Aboriginal families and children.

Given the experience of many of those children placed in overcrowded foster homes, the Children's Advocate Office believes that it is important to introduce a listing of explicit rights and entitlements for children in the care of government, having particular regard to the importance of the United Nations *Convention on the Rights of the Child*, with its emphasis on treating children as rights holders, including the right to state protection and safety from harm. This approach has been taken in British Columbia, Ontario and Quebec.¹⁹⁶

Independent legal representation for children in child welfare proceedings is an issue that has been identified within the Children's Advocate Office for systemic advocacy and reinforced by the findings of this investigation.¹⁹⁷ Children and youth repeatedly have stated that their voices are not being duly considered within the court process in child welfare proceedings and certainly not when decisions are made to place them in overcrowded foster homes.

Unlike child welfare legislation in most other Canadian jurisdictions, the current Saskatchewan child welfare legislation fails to explicitly make children parties to these court proceedings, regardless of age; fails to stipulate any clear authority for independent child representation to be ordered by the court; fails to set out any criteria for a court to consider before deciding on the value of such independent representation; and fails to ensure that there is a level playing field of uniform jurisdiction in all courts across the province to order such legal representation.

One of the unfair consequences is that children do not have access to legal representation in child welfare cases unless the Court of Queen's Bench is the applicable court and then only if it chooses to exercise its general jurisdiction and appoints legal counsel.¹⁹⁸ In Provincial Court, the situation is even more serious, as judges hearing child welfare cases do not have the jurisdiction to appoint counsel for children,¹⁹⁹ even where they are of the view that such representation would be beneficial.

This checkerboard approach to independent child representation is fundamentally unfair and arguably

¹⁹³ *The Child, Family and Community Services Act*, R.S.B.C. 1996, c.46, as amended, at s.2; *The Child and Family Services Act*, S.M. 1985-86, as amended, Declaration of Principles; *The Child, Youth and Family Services Act*, S.N. 1998, c.C-12.1, as amended, at s.7; *The Child and Family Services Act*, R.S.N.W.T., 1997, c.13, as amended, at s.2; *The Child and Family Services Act*, R.S.O. 1990, c.C11, as amended, at s.1(2); *The Child Protection Act*, S.P.E.I. 2000, c.3, as amended, at Preamble.

¹⁹⁴ See *The Child, Youth and Family Services Act*, S.N. 1998, c.C-12.1, as amended, at s.8; *The Child and Family Services Act*, R.S.O. 1990, c.C.11, as amended, at s.2; *The Youth Protection Act*, R.S.Q., c.P-34, as amended, at ss.2,4.

¹⁹⁵ *The British Columbia Child, Family and Community Services Act*, R.S.B.C. 1996, c.46, as amended, at s.3.

¹⁹⁶ See *The Child, Family and Community Services Act*, R.S.B.C. 1996, c.46, as amended, at s.70; *The Child and Family Services Act*, R.S.O. 1990, c.C.11, as amended, at Part V; *The Youth Protection Act*, R.S.Q., c.P-34, as amended, at Chapter II.

¹⁹⁷ For a discussion of this issue in greater depth, see M.M. Bernstein, *Access to Justice: The Right of Saskatchewan Children and Youth to be Heard in Child Welfare Proceedings*, Saskatchewan Children's Advocate Office, CAO Perspectives. Vol.1, Issue 3, January 2008 [Special Issue to support Child Representation Training in Saskatchewan] available online at www.saskcao.ca; and see also M.M. Bernstein & P. Kovacs, *Child and Youth Representation Pro Bono Roster Protocol Guide for Lawyers*, Revised August 2008, where the operational procedures for the Roster are set out at length.

¹⁹⁸ See *Re T.L.F.*, [2001] S.J. 353 (Sask. Q.B.), per Ryan-Froslic, J.; *Re R.M.S.*, [2001] S.J. 724 (Sask. Q.B.), per Smith, J.

¹⁹⁹ See *Re K.A.*, [2005], S.J. No. 179 (Sask. Prov. Ct.), per Kaiser, J.

leads to unequal treatment under the law contrary to Sections 7 and 15 of the *The Canadian Charter of Rights and Freedoms*. There is, for example, the potential violation of these Charter provisions, where there is interference with the child's physical and psychological security of the person, through the denial of the procedural protections of party status and independent legal representation.²⁰⁰

In the context of this investigation, independent legal representation for children and youth in care, particularly, in overcrowded foster homes, would provide the following benefits:

- 1) They would be assisted in understanding all of their rights and potential legal remedies where they are not having their various physical, emotional, medical, educational, cultural and spiritual needs met;
- 2) They would be assisted in seeking greater participation in the development of their case plans and in decisions impacting upon them. In this regard, it is particularly important for them to feel empowered where they may have been victimized twice before – once prior to being admitted to care and secondly, after being admitted to care;
- 3) They would be assisted in challenging their placements, if harmful, both through negotiations, through the child welfare court process, and through our newly recommended process of a Residential Placement Review Panel;
- 4) They would be assisted in seeking a variation of their court orders where there has been a significant change in circumstances and such orders are no longer promoting their best interests;
- 5) They would be assisted in bringing an application before the court to inform the court that the plan upon which the court based its 'best interests' disposition is no longer being implemented, and in seeking further direction from the court;
- 6) They would be assisted in expressing their opposition to a change in placement where they feel it would be disruptive and contrary to their best interests. In particular, under our new recommendation, a child could not be removed from a foster home where he or she was residing for at least 12 months without receiving two weeks' notice, unless that child would be at imminent risk of harm, if allowed to remain in the home;
- 7) They would be assisted in seeking compensation from an abuser or negligent caregiver where the abuse or neglect occurred in their biological or extended family home, or from an abusive foster parent and/or the Ministry of Social Services for failing to act as a 'prudent parent' through negligent oversight and supervision, where the abuse or neglect occurred in a foster home or other residential setting, either by means of a traditional lawsuit, or through the process of our newly recommended Child and Youth Victim Compensation Panel;
- 8) They would be assisted in reducing the duration of their time in care by ensuring that there is no excessive delay in the final disposition of their case in the court process, so that a permanent plan can be implemented at the earliest possible opportunity;
- 9) They would be assisted in exploring opportunities to divert their case out of the court process through the effective use of alternative dispute resolution (ADR) processes, such as child protection mediation, family group conferencing, healing circles and Opikinawasowin;²⁰¹ and

²⁰⁰ See *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46, 50 R.F.L. (4th) 63, where the Supreme Court of Canada concluded that, pursuant to s. 7 of the *Charter*, a single mother on social assistance whose children had been apprehended by a child welfare agency had the constitutional right to be represented by counsel paid by the government to ensure that the temporary wardship proceedings were in accordance with the principles of fundamental justice. Writing for the majority of the Court, Lamer, C.J.C. stated that "[n]ot only is the parent's right to security of the person at stake, the child's is as well." See also: N. Bala, *The Charter of Rights and Child Welfare Law*, Law Society of Upper Canada Program, *The Conduct of a Child Protection File*, March 9, 2004 at 11-12, where he concludes that "it is now clear that when faced with a concrete situation in which parents or children are being subjected to treatment in a child protection proceeding that does not accord with the principles of fundamental justice, the courts will respond."

²⁰¹ The "Opikinawasowin" is a process that first received judicial recognition in a decision of Madam Justice Wright in *Re J.D.* (2003), 236 Sask. R. 78 (Q.B.), where it is described as an alternative, non-adversarial proceeding before a council of Elders, a more traditional and culturally sensitive form of dispute resolution. Opikinawasowin is a Cree word, which literally translated means "the lifting up of children" or "holding the children in high esteem."

- 10) For those children and youth who are permanent wards, they would be assisted in achieving the permanency intended by the courts by ensuring that they are registered and placed for adoption in a timely manner.

6.16 Our Obligation to Saskatchewan Children

Canada signed the United Nations *Convention on the Rights of the Child*²⁰² on May 28, 1990, and ratified it on December 13, 1991. Likewise, the Saskatchewan Legislature confirmed its support two days earlier on December 11, 1991, with the Provincial Government stating:

Support for the Convention is essential because it reaffirms our responsibility for the care and well-being of all children in our society. The Convention also serves as a reminder that as long as there are still children in this province who are not receiving the care and protection to which they are entitled, there is more which must be done.²⁰³

Signing and ratifying the *Convention on the Rights of the Child* obligates Canada²⁰⁴ and Saskatchewan to:

[E]nsure that all children — without discrimination in any form — benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in their rights in an accessible and active manner.²⁰⁵

The Federal and Provincial Governments' endorsement of the United Nations *Convention on the Rights of the Child* has committed Canada as a Nation, and Saskatchewan as a Province, to continue to work towards implementing children's rights. It is the Children's Advocates Office's belief that grounding provincial legislation and Ministry policy in the Articles outlined in the *Convention on the Rights of the Child* is a critical factor in ensuring that children receive the services to which they are entitled. It should also be noted that these Articles set out minimum universal rights only and do not affect the right of Canada, or Saskatchewan, within their respective spheres of jurisdiction, to implement laws "which are more conducive to the realization of the rights of the child," as stipulated in Article 41 of the *Convention*.

The aggregate experience of the Children's Advocate Office — in the areas of advocacy, public education, child death and critical injury investigations and systematic investigations such as this one into overcrowded foster homes — has demonstrated that as a society responsible for the well-being and best interests of all children, we require a paradigm shift in attitude, policy, practice and legislation.

To do a better job of addressing the needs of children, especially to place the interests of *Children and Youth First* in Saskatchewan, the Children's Advocate Office has developed a set of principles that simplify and highlight the most critical and relevant provisions in the United Nations *Convention on the Rights of the Child*, based upon the CAO staff observations and experience, and which make them explicitly applicable to all Saskatchewan children. These *Children and Youth First* Principles state that **all** children and youth in Saskatchewan are entitled to:

- Those rights defined by the United Nations *Convention on the Rights of the Child*.
- Participate and be heard before any decision affecting them is made.
- Have their 'best interests' given paramount consideration in any action or decision involving them.
- An equal standard of care, protection and services.
- The highest standard of health and education possible in order to reach their fullest potential.
- Safety and protection from all forms of physical, emotional and sexual harm, while in the care of parents, governments, legal guardians or any person.

²⁰² United Nations *Convention on the Rights of the Child* (adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989), online: <www.unhcr.ch/html>.

²⁰³ Legislative Assembly, *Saskatchewan Hansard*, (11 December 1991).

²⁰⁴ Canada signed the *Convention on the Rights of the Child* on May 28, 1990 and ratified it on December 13, 1991. It came into force in Canada on January 12, 1992. It ratified the Optional Protocol on the Involvement of Children in Armed Conflict in 2000 and the Optional Protocol on the Sale of Children, Prostitution and Child Pornography in 2005.

²⁰⁵ *Supra* note 205.

- Be treated as the primary client, and at the centre, of all child serving systems.
- Have consideration given to the importance of their unique life history and spiritual traditions and practices, in accordance with their stated views and preferences.

The Children's Advocate Office has developed these *Children and Youth First* Principles to define our core beliefs in relation to the care and services, which ought to be provided to Saskatchewan children and youth. This is important in order to avoid definitional ambiguity, since the Office often finds itself in conflict with government's interpretation of putting the needs of 'children and youth first.'

From formulating and advancing the *Children and Youth First* Principles in May 2007, the Children's Advocate Office initiated discussions with the Province of Saskatchewan's child serving ministries to incorporate these Principles into both proposed and existing legislation, policy, programming and practice applicable to children and youth in receipt of government services. In July of 2007, the Office proposed to the previous Provincial Government a *Children and Youth First* Action Plan for Saskatchewan. The need for such an Action Plan was also introduced through initial correspondence to the new Provincial Government in late 2007, and it is understood by the Office that the current government has taken the Principles under consideration and will be informing the Office of its future intentions. Unfortunately, there has been far too much drift and delay regarding the endorsement and implementation of these *Children and Youth First* Principles without very much communication and dialogue occurring with the Children's Advocate Office. This inertia and lack of follow-through is puzzling to the Office and underscores the need to incorporate the *Children and Youth First* Action Plan and Principles into formal recommendations that can be tracked and reported upon publicly by the Office.

In light of the findings of this foster home overcrowding investigation, the Children's Advocate Office believes more strongly than ever before that incorporating the *Children and Youth First* Principles into legislation and policies, and the development of a *Children and Youth First* Action Plan for Saskatchewan are essential components to protecting and serving children in the care of the Minister of Social Services.

7 Findings

1. That Ministry of Social Services staff are placing children, admitted to the Minister's care, into overcrowded foster homes in the Saskatoon Service Centre area on a chronic basis, contrary to Ministry policy, which permits a maximum of four children in regular foster homes, and two children in therapeutic foster homes.
2. That as of June 2008, approximately 16 per cent of all active foster homes in the Saskatoon Service Centre area were overcrowded, contrary to Ministry policy, and exceeded the total assessed and approved capacity of those foster homes by 231 per cent. At the same time, foster homes designated as therapeutic that were overcrowded exceeded their total assessed and approved capacity by at least 411 per cent.
3. That Ministry of Social Services staff are not securing or documenting the required approvals from Regional Directors or their designates to exceed the maximum number of placements in foster homes in the Saskatoon Service Centre area, contrary to Ministry policy.
4. That, as reasonably foreseen and predicted by the Ministry of Social Services managers in the Saskatoon Service Centre, the number of children admitted into the care of the Minister of Social Services has increased by nearly 100 children per year between 2004 and 2008 in the Saskatoon Service Centre area.
5. That, as of October 2008, there are more children (336) residing in overcrowded foster homes in the Saskatoon Service Centre area than when this investigation began in August 2007 (256).
6. That the number of placements in individual overcrowded foster homes in the Saskatoon Service Centre area has ranged from five to 21 children.
7. That the degree of individual foster home overcrowding is significantly higher than all other Canadian jurisdictions contacted by the Children's Advocate Office during this investigation, with nine being the highest number cited for placements in a single foster home.
8. That the Ministry of Social Services did not report, among the number of total placements in overcrowded foster homes in the Saskatoon Service Centre area, those children who are residing in the home under Persons of Sufficient Interest (PSI) designation.
9. That the Ministry of Social Services does not collect information and cannot provide information on children placed in the delegated care of First Nations child and family agencies in the Saskatoon Service Centre area.
10. That children of Aboriginal ancestry represent 66 per cent of the total number of inappropriate placements by the Ministry of Social Services in overcrowded foster homes in the Saskatoon Service Centre area.
11. That children between the ages of five and 15 years represent 69 per cent of the total number of inappropriate placements by the Ministry of Social Services in overcrowded foster homes in the Saskatoon Service Centre area.
12. That Ministry of Social Services staff have identified and communicated to their managers the scale and scope of the number of children coming into care and the lack of available foster home or appropriate alternative placement resources in the Saskatoon Service Centre area.
13. That Ministry of Social Services managers have identified and communicated to senior policy and decision makers within the same Ministry, the scale and scope of the number of children coming into care and the lack of available foster home placement resources in the Saskatoon Service Centre area.
14. That the Ministry of Social Services was aware, from at least 2004, that a severe foster home overcrowding crisis existed in the Saskatoon Service Centre area, and did not undertake to provide adequate human and financial resources to address the issue.

15. That the Ministry of Social Services was aware, from at least 1986, that in Saskatchewan there is:
 - A shortage of foster home placement resources.
 - Overcrowding in many foster homes.
 - Inappropriate placement matching of children and foster home resources occurring.
 - Inadequate support, resources and respite services for foster parents.
 - Inadequate case information documented and communicated to foster parents.
 - High turnover in caseworkers and not enough caseworkers to facilitate the needs of the children, youth, birth families and foster parents.
16. That the Ministry of Social Services has allowed its staff to continue to work, with little accountability, in a culture of non-compliance, where policies and legislation related to promoting the best interests of children in the care of the Minister and to preventing their placement in overcrowded foster homes in the Saskatoon Service Centre area, are routinely breached.
17. That the Ministry of Social Services response to the ever-increasing numbers of children coming into care, and the lack of available foster care or alternative placement resources in the Saskatoon Service Centre area, has been inadequate and disproportionate to the severity and urgency of the situation.
18. That other Canadian jurisdictions have been more successful than Saskatchewan in preventing and/or alleviating foster home overcrowding, and have dealt with the increase in the numbers of children coming into care by developing a more comprehensive and flexible range of alternative out-of-care and in-care placement resources that promote permanency planning, as well as by developing intensive and creative recruitment and retention campaigns for new foster homes.
19. That the Ministry of Social Services could not report pertinent baseline information requisitioned by the Children's Advocate Office as part of this investigation, including the:
 - Average caseloads for front-line child protection workers either provincially or in the Centre Region.
 - Average length of stay in care for all children in care provincially, for all children in foster care provincially, for all children in care in the Centre Region and for all children in foster care in the Centre Region, and how this compares with other Canadian jurisdictions.
 - Average frequency in the change of workers for children in care provincially, for all children in foster care provincially, for all children in care in the Centre Region and for all children in foster care in the Centre Region, and how this compares with other Canadian jurisdictions.
 - Average frequency of contact between child protection workers and foster parents provincially and in the Centre Region, and how this compares with other Canadian jurisdictions.
 - Percentage of time spent by child protection workers provincially and in the Centre Region in direct client contact, in clinical supervision and in preparing documentation, and how this compares with other Canadian jurisdictions.
 - Percentage of compliance with Ministry policy by child protection workers provincially and in the Centre Region, and how this compares with other Canadian jurisdictions.
 - The exact number of active foster homes and their location in Saskatchewan.
20. That the Ministry of Social Services does not adequately collect pertinent baseline information related to children in the care of the Minister and/or foster homes.
21. That the Ministry of Social Services does not adequately monitor and enforce policies regarding the management of pertinent baseline information related to children in the care of the Minister and/or foster homes.
22. That, as a result of the lack of information collected by the Ministry of Social Services related to children in the care of the Minister and/or foster homes, such children are being set adrift in the foster care system without knowledge of, or access to, the available supports and services of the Ministry of Social Services.
23. That foster homes do not require a license to operate in Saskatchewan.
24. That foster homes are exempt from Saskatchewan legislation and regulations governing physical requirements for residential facilities.

25. That Ministry of Social Services staff are not conducting the required assessments and placement matching, as between the individual needs of children in the care of the Minister and the corresponding skills and capacity of foster homes, in the Saskatoon Service Centre area, contrary to Ministry policy.
26. That, as a result of the lack of required assessments and placement matching, children in the care of the Ministry of Social Services are being placed in overcrowded foster homes in the Saskatoon Service Centre area:
- a. That are less likely to:
 - Meet or exceed the child's best interests, having regard to the child's physical, emotional, psychological, educational, cultural, religious and spiritual needs.
 - Nurture the child's physical, mental and emotional development.
 - Protect the child from further risk of physical, sexual, emotional and/or psychological harm.
 - b. Without consideration given to the:
 - Age, gender or assessed needs of the child.
 - Assessed capacity of the foster home to meet or exceed the best interests of the child.
27. That, as a result of that lack of proper assessment and placement matching, children in the care of the Ministry of Social Services and placed in overcrowded foster homes in the Saskatoon Service Centre area:
- May be exposed to environmental, interpersonal, and self-induced risks, including the possibility of sexual abuse and violence.
 - May have their placements breakdown and are at risk of being moved more frequently and/or running away.
28. That Ministry of Social Services staff are not documenting or communicating assessment and pre-placement information to foster parents when they place children in overcrowded foster homes in the Saskatoon Service Centre area, contrary to Ministry policy.
29. That, as a result of the lack of documentation and/or communication of assessment and pre-placement information to foster parents, children in the care of the Minister are being placed in overcrowded foster homes in the Saskatoon Service Centre area, which are less likely to:
- Meet or exceed the child's best interests, having regard to the child's physical, emotional, psychological, educational, cultural, religious and spiritual needs.
 - Nurture the child's physical, mental and emotional development.
 - Protect the child from further risk of physical, sexual, emotional and/or psychological harm.
30. That Ministry of Social Services staff did not communicate to foster parents or enforce the minimum standards for physical accommodations in overcrowded foster homes in the Saskatoon Service Centre area pursuant to *The Residential Care Services: A Building, Health and Safety Guide*, contrary to Ministry policy.
31. That, as a result of this lack of communication and enforcement, as well as the practice of placing children in foster homes in excess of the maximum number set out in placement policies and the assessed capacity of the foster home, Children's Advocate Office investigators found in their visits that:
- Ninety per cent of overcrowded foster homes visited failed to meet minimum standards for physical accommodations pursuant to *The Residential Care Services: A Building, Health and Safety Guide*.
 - Seventy per cent of overcrowded foster homes visited did not have the physical capacity to meet minimum standards for bedroom requirements pursuant to *The Residential Care Services: A Building, Health and Safety Guide*.
 - Eighty per cent of overcrowded foster homes visited did not have the physical capacity to meet minimum standards for bathroom requirements pursuant to the *Residential Care Services: A Building, Health and Safety Guide*.
 - Sixty per cent of overcrowded foster homes visited did not have the essential general safety requirements to ensure that the home environment could prevent and/or respond to emergency situations.

32. That Ministry of Social Services staff openly encouraged foster parents in overcrowded foster homes in the Saskatoon Service Centre area to use sleeping arrangements that place children at risk of physical, sexual, emotional and/or psychological harm.
33. That foster parents and Ministry of Social Services staff are observing that the intensity of victimization and damage experienced by children coming into the care of the Minister is increasing.
34. That foster parents are experiencing an increase in incidents of aggression, violence and sexual intrusion between foster children when their home is overcrowded.
35. That foster parents have concerns over issues of liability due to the high numbers of children placed in their homes and the need to hire and supervise home help.
36. That children in the care of the Minister, who are placed in overcrowded homes in the Saskatoon Service Centre area, exhibited concerns and stress over their placement, the high caseworker turnover in their cases, and the lack of information provided to them. Of the children interviewed:
 - Eighty-seven per cent were unaware of the reason that they were in their particular foster home.
 - None were aware of the Ministry policy that restricts the maximum number of placements in foster homes.
 - Eighty-eight per cent had no knowledge of their case plan.
 - Sixty-seven per cent had concerns about the lack of contact with their parents and other siblings in foster care.
 - Forty-three per cent had no idea how long or why they were in foster care.
 - Forty-eight per cent identified that they did not want to be involved in their culture.
 - Twenty-four per cent did not know their cultural background.
 - Seventy-seven per cent had never heard of the Children's Advocate Office.
37. That concerns regarding child-on-child violence, including 18 incidents, were found to be present in 62 per cent of overcrowded foster home files reviewed, in the Saskatoon Service Centre area without adequate intervention by the Ministry of Social Services to investigate or respond to the alleged concern.
38. That the Ministry of Social Services did not investigate 22 allegations of foster parents neglecting and abusing children in overcrowded foster homes, contrary to Ministry policy.
39. That there are children in the care of the Minister of Social Services who were placed in overcrowded foster homes and were physically assaulted and/or sexually violated.
40. That there are children in the care of the Minister of Social Services who were afraid for their personal safety when placed in overcrowded foster homes.
41. That the parent(s) or guardian(s), of children in the care of the Minister of Social Services, who were placed in overcrowded foster homes in the Saskatoon Service Centre area and were being physically assaulted and/or sexually violated, were not being informed of these incidents.
42. That the profiles of children placed in overcrowded foster homes raise legitimate concerns regarding the level of risk present in these homes.
43. That foster parents find it very difficult to provide the level of care and supervision that is required when their home is overcrowded.
44. That foster parents feel bullied or manipulated to take more children or youth than they have the capacity to accommodate and feel targeted for retribution by the Ministry of Social Services if they do not take the additional placement.
45. That foster parents, who do take in more children than they have the assessed capacity to accommodate, may be unaware of, or ignoring the short and long-term effects that overcrowding may have on their own and the children's physical, emotional and/or psychological well-being.

46. That Ministry of Social Services managers and staff have expressed concerns regarding the state of the foster care system to the Ministry of Social Services including warnings that children are at risk of physical, sexual, emotional and/or psychological abuse by placing them in overcrowded foster homes.
47. That the Minister of Social Services is under a legal, fiduciary and non-delegatable duty to act as a prudent parent and in the best interests of children in her lawful care.
48. That the Ministry of Social Services is subjecting children in its care to risk of physical, sexual, emotional and/or psychological harm by placing them in overcrowded foster homes, which exceed the assessed capacity of such foster homes and violate the Ministry's own policy limitations.
49. That the Ministry of Social Services is exposing children in its care to environmental, self-induced and interpersonal risks of harm, including child-on-child violence, child-on-caregiver violence, and caregiver-on-child violence, by placing them in overcrowded foster homes, which exceed the assessed capacity of such foster homes and violate the Ministry's own policy limitations.



Brenda, a 9-year-old interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture of her foster home.

8 Recommendations

1. That the Ministry of Social Services report to the Children's Advocate on a biannual basis (every June 30th and December 31st) its progress, including results of quality improvement and accountability measures undertaken by the Ministry, regarding each and every recommendation contained in this report, so as to facilitate public reporting by the Children's Advocate Office.
2. That the Ministry of Social Services immediately cease the practice of placing children in the care of the Minister in foster homes, where the existing complement of children exceeds the maximum defined in Ministry policies of four for any foster home, or two for therapeutic foster homes, unless it is acting in compliance with the prescribed exceptions and approval processes, as set out in Ministry policy.
3. That the Ministry of Social Services, Saskatoon Service Centre, immediately initiate a review, assessment and development of a management plan and funding proposal, to be submitted to the Ministry of Social Services by March 31, 2009, that would address the immediate needs of the foster care system to remedy and relieve by June 30, 2009, the existing cases of inappropriate placements of children in overcrowded foster homes in the Saskatoon Service Centre area.
4. That the Ministry of Social Services, upon receipt of the requisite funding proposal, allocate sufficient financial resources to the Saskatoon Service Centre by April 15, 2009, to remedy and relieve by June 30, 2009, the existing cases of inappropriate placements of children in overcrowded foster homes in the Saskatoon Service Centre area.
5. That Ministry of Social Services managers in the Saskatoon Service Centre immediately commence the process of reviewing the case plans and status of each child residing in overcrowded foster homes in the Saskatoon Service Centre area, including if appropriate, interviews with those children.
6. That Ministry of Social Services managers in the Saskatoon Service Centre, upon completion of any interviews, and review of the case plans and status, of each child residing in overcrowded foster homes in the Saskatoon Service Centre area, determine appropriate placement matching and foster care resourcing, so that by June 30, 2009:
 - Suitable caregiver supervision relative to the assessed needs of the individual child in the care of the Minister is provided.
 - Protection from further risk of physical, sexual, psychological and/or emotional harm to the child in the care of the Minister is provided.
 - Consideration is given to the age, gender, and physical, psychological, emotional, educational, cultural and/or spiritual needs and development of the child in the care of the Minister, so as to meet or exceed his or her best interests.
7. That the Ministry of Social Services work in partnership with the Saskatchewan Foster Families Association to immediately develop and implement a short-term action plan by June 30, 2009, and a long-term action plan by December 31, 2009, regarding the recruitment and retention of foster homes in Saskatchewan.
8. That the Ministry of Social Services, as part of the development of short and long-term action plans to recruit and retain foster homes, conduct a thorough review and assessment of the responses by other Canadian jurisdictions to increasing numbers of children coming into provincial care, and any recruitment campaigns and retention strategies developed as a result.
9. That the Ministry of Social Services work in partnership with the Saskatchewan Foster Families Association to develop frequent and consistent feedback and mediation mechanisms for foster parents and Ministry personnel.

10. That the Ministry of Social Services define in policy the role and responsibilities of foster parents as articulated in its PRIDE (Parent Resources for Information Development and Education) training as a professional team member responsible for the case management of all children placed in its care.
11. That the Ministry of Social Services immediately enforce practices that comply with existing information management²⁰⁶ policies addressing the collection, use, access to, disclosure and retention of legal, personal, historical and placement information regarding every child in the care of the Minister.
12. That the Ministry of Social Services immediately conduct mandatory education and performance management for Ministry personnel whose job duties include the collection, use, access to, disclosure and retention of legal, personal, historical and placement information regarding every child in the care of the Minister.
13. That the Ministry of Social Services develop and implement a mandatory single information management system to be fully operational by January 1, 2010, with appropriate components to address the collection, use, access to, disclosure and retention of legal, personal, historical and placement information regarding every child and youth in the care of the Minister, including specifically, but not limited to, children who are residing in foster homes under the care of Persons of Sufficient Interest or alternative caregivers, and children who are residing under the delegated authority of Saskatchewan's First Nations' child and family services agencies.
14. That the Ministry of Social Services create a Special Committee on Information Management, to include representation from the Ministry of Social Services, current and former youth in care, the Federation of Saskatchewan Indian Nations, the Métis Nation–Saskatchewan, the Saskatchewan Children's Advocate Office, and other relevant participants, to identify the necessary information that ought to be collected, used, accessed, disclosed and retained as part of its new information management system.
15. That the Ministry of Social Services create a Special Committee on Foster Care and Permanency Planning, to include representation from the Ministry of Social Services, current and former youth in care, the Federation of Saskatchewan Indian Nations, the Métis Nation–Saskatchewan, the Saskatchewan Children's Advocate Office, and other relevant participants, to address the development and implementation of a plan that would focus on creating a safe and nurturing foster care system dedicated to promoting the best interests of children in foster care and to expanding the range of permanency options for both alternative out-of-care and in-care placements, so as to reduce the increasing compression in foster care, while producing better and sustainable outcomes for these vulnerable children.
16. That the Ministry of Social Services immediately enforce practices that comply with existing Ministry assessment and placement matching policies for children in the care of the Minister and foster homes.
17. That the Ministry of Social Services immediately conduct mandatory education and performance management for Ministry personnel whose job duties include the assessment and placement matching for children in the care of the Minister and foster homes.
18. That the Ministry of Social Services immediately enforce practices that comply with existing Ministry policy requirements for physical accommodations in foster homes.
19. That the Ministry of Social Services immediately conduct mandatory education and performance management for Ministry personnel whose job duties include the assessment and enforcement of physical accommodations in foster homes.
20. That the Ministry of Social Services immediately modify Ministry policy to explicitly expand the definition of "serious case incidents," so as to be inclusive of child-on-child violence, child-on-caregiver violence and caregiver-on-child violence.

²⁰⁶ The Children's Advocate Office defines "information management" to include all activities of the Ministry of Social Services in which information is acquired, organized, maintained and retrieved from or on behalf of those receiving services from the Ministry. In the context of this and subsequent recommendations of this report, the Ministry should consider this to include ALL policies and practices for paper-based and technology-based filing and data maintenance systems relative to children in the care of the Minister.

21. That the Ministry of Social Services immediately enforce practices that comply with the modified Ministry serious case incident reporting and investigation policies.
22. That the Ministry of Social Services immediately conduct mandatory education and performance management for Ministry personnel whose job duties include serious case incident reporting and investigations.
23. That the Ministry of Social Services utilize its modified information management system to track and investigate serious case incidents.
24. That the Ministry of Social Services provide children and/or foster parents with appropriate levels of service and support to address physical, sexual, psychological and/or emotional harm suffered as a result of serious case incidents, once investigated.
25. That the Ministry of Social Services immediately develop and implement a policy that requires the Ministry to advise the parent(s) when their child has been involved in a serious case incident, except where the child is a permanent ward of the Minister.
26. That the Ministry of Social Services immediately conduct mandatory education for all Ministry personnel on the rights of children under the United Nations *Convention on the Rights of the Child* and the obligations of the Province as a signatory to this document.
27. That the Government of Saskatchewan develop a well-articulated and integrated vision and action plan for children and youth, which places the interests of children and youth first.
28. That the Government of Saskatchewan include references to both children and youth in the vision and core principles of the *Children and Youth First Action Plan*.
29. That the Government of Saskatchewan endorse all eight *Children and Youth First Principles*, as identified by the Saskatchewan Children's Advocate Office, which will anchor this new vision.
30. That the Ministry of Social Services immediately incorporate in *The Child and Family Services Act*, as well as in policy and practice, the Saskatchewan Children's Advocate Office *Children and Youth First Principles* that all children and youth in Saskatchewan are entitled to:
 - Those rights defined by the United Nations *Convention on the Rights of the Child*.
 - Participate and be heard before any decision affecting them is made.
 - Have their 'best interests' given paramount consideration in any action or decision involving them.
 - An equal standard of care, protection and services.
 - The highest standard of health and education possible in order to reach their fullest potential.
 - Safety and protection from all forms of physical, emotional and sexual harm, while in the care of parents, governments, legal guardians or any person.
 - Be treated as the primary client, and at the centre, of all child-serving systems.
 - Have consideration given to the importance of their unique life history and spiritual traditions and practices, in accordance with their stated views and preferences.
31. That the Minister of Social Services immediately introduce proposed amendments to regulations that create an accountability framework for the licensing of foster homes that includes stipulations regarding physical accommodations and the maximum number of children to be placed in each type of licensed home.
32. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* requiring the Ministry of Social Services or service providers to inform any child upon admission to care of his or her entitlements under *The Child and Family Services Act*.
33. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* requiring the Ministry of Social Services or service providers to inform any child upon admission to care of the existence and role of the Children's Advocate Office, and if requested, to provide without delay a means to privately contact and/or to privately meet with representatives of the Children's Advocate Office.

34. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* creating a Residential Placement Review Panel, to which a child or other persons, who have demonstrated an informed concern for a child's well-being, may make application for the review of a Ministry's placement decision.
35. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* stipulating that a child placed in foster care for more than 12 months cannot be removed from a foster home by the Ministry of Social Services without giving two weeks notice to the foster parent and child, unless the child would be at imminent risk if allowed to remain in the home.
36. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* stipulating that notice, legal representation and participant rights be given in proceedings (subject to prescribed limitations) to foster parents in cases where they have provided continuous care to a child for six months or longer.
37. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* reducing the maximum time period of all voluntary and court-ordered cumulative temporary care to 12 months for children under six years of age, and to a maximum cumulative period of 24 months for children six years of age and over.
38. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* creating a Child and Youth Victim Compensation Panel, to which a child or other persons, who have demonstrated an informed concern for a child's well-being, may make application to determine whether a child or youth in the care of the Ministry, who has been a victim of maltreatment or negligence causing physical, sexual, emotional and/or psychological harm, should be compensated.

Further to the above recommendations, the Children's Advocate Office's investigation into foster home overcrowding in the Saskatoon Office Service Area affirms and forwards again, the following recommendations previously made to the Ministry of Social Services:

39. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* codifying a list of guiding principles which can be used at all decision-making points under the legislation, with the most important principle being "the paramount purposes of the Act shall be to promote the best interests, protection, safety, and well-being of children." (Oyate Systemic Issues Report SYS.25 (06)(a)).
40. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* codifying a list of service delivery principles with the common objective of reinforcing the government's obligations to provide services in a respectful and culturally sensitive manner; that reflect the need for active participation and planning by aboriginal communities in respect of [A]boriginal families and children; and that optimize maximum participation and representation for both children and their families. (Oyate Systemic Issues Report SYS.25(06)(b)).
41. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* codifying the rights and entitlements of children in the care of the Minister. This may be in the form of a Preamble, Declaration of Principles, or preferably, a new Part of the Act, ideally incorporating the principles set out in the United Nations *Convention on the Rights of the Child*. (Oyate Systemic Issues Report SYS.25(06)(b)).
42. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* enabling children to obtain full status as a party in child welfare proceedings. (Access to Justice Principles 06-10840)
43. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* authorizing judges at all Court levels in Saskatchewan to appoint independent legal representation for children in child welfare proceedings. (Access to Justice Principles 06-10841)

44. That the Minister of Social Services immediately introduce proposed amendments to *The Child and Family Services Act* setting out prescribed criteria by which a Court will determine whether a child requires independent legal representation in child welfare proceedings. (Access to Justice Principles 06-10842)
45. That the Ministers of Social Services and Justice, in collaboration with relevant stakeholders, immediately develop, fund and implement a legal program, with sufficient training and administrative oversight, that would provide children with access to independent legal representation in child welfare proceedings. (Access to Justice Principles 06-10844)



Kate, an 8-year-old interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture of herself.

9 Ministry Response

On December 22, 2008, the Children's Advocate submitted a preliminary report to the Deputy Minister of Social Services concerning foster home crowding in the Saskatoon Service Centre area. This was done in accordance with Section 21(3) of *The Ombudsman and Children's Advocate Act* as the findings and recommendations may adversely affect the Ministry. The Children's Advocate requested that the Ministry of Social Services provide a formal response respecting the investigation within 45 days of receiving the preliminary report.²⁰⁷

On January 26, 2009, the Ministry of Social Services sent a written response from the Special Advisor to the Deputy Minister. The Ministry's response identified several issues that it wished to bring to the attention of the Children's Advocate for clarification, or alternatively, to modify or remove from the preliminary investigation report.²⁰⁸

On February 2, 2009, the Children's Advocate sent a written response to the Deputy Minister, which advised, in part:

After considering the issues that were outlined in the Ministry's letter of response, and after carefully reviewing the investigative facts and analysis with the investigation team, I have concluded that there are no factual errors contained in our preliminary report....

I have been surprised by the tone of the Ministry's response and have found this written communication to be argumentative and misdirected, rather than focusing on the merits of our investigation, and the necessary outcomes for the children and youth who are continuing to reside in 'at risk' overcrowded foster homes.²⁰⁹

No further response to the Report was provided by the Ministry of Social Services within the 45 day period.

²⁰⁷ Letter from Marvin Bernstein, Children's Advocate, to Allen Hansen, Deputy Minister, Ministry of Social Services (December 22, 2008).

²⁰⁸ Letter from Tim Korol, Special Advisor to the Deputy Minister, Ministry of Social Services, to Marvin Bernstein, Children's Advocate (January 26, 2008).

²⁰⁹ Letter from Marvin Bernstein, Children's Advocate, to Allen Hansen, Deputy Minister, Ministry of Social Services (February 2, 2009).



Ministry of
Social
Services

160 2nd Avenue South
SASKATOON, Canada
S7K 2H6

Phone: (306) 933-6034
Fax: (306) 933-6005

January 26, 2009

RECEIVED

JAN 26 2009

CHILDRENS
ADVOCATE

Marvin Bernstein, Children's Advocate
Children's Advocate Office
315 25th Street East
SASKATOON SK S7K 2H6

Dear Mr. Bernstein:

Re: Your draft report regarding Foster Home Overcrowding in the Centre
Region

Thank you for providing a copy of your draft report to our offices December 22, 2008. After reviewing your document we wish to bring a number of issues to your attention. These issues are with respect to the ministry's concerns regarding safety of children, procedural fairness and mistake of fact and policy.

Safety of Children

Throughout your report you reference a number of children. Quite correctly you disguised their identity so as to protect them from being identified to the public. The ministry's issue is that you have been so effective in their disguise that we are unable to ascertain if they and the situations referred to have been attended to. In addition the ministry must determine if ongoing appropriate treatment is being made available to these young individuals.

As an example at page 40 of your report, last paragraph, "...*Anal sex between two nine-year old boys in foster care and one developmentally-delayed adopted eight-year-old boy.*" The ministry is at a total loss as to the identity of these three (3) individuals.

Appendix "A" is a table listing other children referenced in your report. As of this date, your office has not provided the identities of these children and the ministry has been unable to identify them through our records.

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The ministry is also not clear as to the identity of all the homes referenced in your report. The safety of children in the ministry's care is paramount to the ministry. Therefore, we respectfully request that you identify all homes you are aware of that have breached the *Residential Home Guide* as well as, the guidelines that have been offended. We are also respectfully requesting a list of any homes that you may consider unsafe. Detail of why you believe these homes are unsafe would be appreciated. We want to ensure we have not missed anything or misinterpreted any standard in our supervision of these homes that may place children in harm's way.

This information is important to the ministry as the ministry's concerns relate to the ongoing safety of children referenced in your report as well as, safety as it relates to children in our care (present and future) that are not referenced in your report.

Procedural fairness suggests we need sufficient detail to allow us to reply to all allegations. Insufficient detail surrounding the identity of these children makes it challenging for the ministry to adequately, confidently and accurately reply to all allegations and concerns as currently laid out in your report.

Other Procedural Issues

General duty of fairness:

We understand you are able to set your own rules of procedure. Additionally, you will decide on what procedural fairness you will exercise in your process. We assume the public's need is consistent with the expectations of the ministry in that regard. We believe all parties desire to be fairly treated during an investigation. We also believe the report should continue that high degree of fairness.

We believe the public expects, as do we, that all parties that must answer to your report be afforded the "general duty of fairness". Unfortunately, in your report there are a number of instances where the "general duty of fairness" was absent.

For example, at page 38 of your report, paragraph 2 you state, "...Ministry case worker responded that, "A certain amount of sexual abuse is to be expected in a foster home." Another example is found at page 29, paragraph one, "...The girl was later found on a bed kissing a 12-year-old girl ...this incident was report (sic) to a Ministry case worker, the parents were told to get the 17-year-old child a dildo."

These are very serious accusations concerning ministry staff. The questions arise; is the Advocate reporting this statement as fact? If so, what investigation did the Advocate take to identify the worker? What was the worker's response to this allegation? How did the Advocate determine the issue of credibility?

... 3

To: Marvin Bernstein, Children's Advocate
January 26, 2009
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These statements do not have any direct relevance in the determination of the substantive issue of your report "overcrowding." There are many other such statements alleged to have been made by ministry staff included in your report. We respectfully request the Advocate apply the rules of fairness to all ministry staff as well as, any item that is referenced in his report. In the alternative, if the rules of fairness are not applied in these circumstances and credibility has not been assessed we submit the "alleged statements" should be struck from the report.

We respectfully submit there are two (2) other procedural fairness issues that should be attended to: The use of *hearsay* and *absence of sufficient context and detail*.

Hearsay:

Throughout your report there are a number of situations where hearsay is referenced. A case in point is page 81 of your report paragraph 3, "...Foster parents interviewed indicated at times, that they **had heard** of circumstances in some foster homes where it was required that up to six children sleep in one bedroom ..." (*my emphasis*)

Again at page 52, paragraph 5, "... the Children's Advocate Office has since heard that the duplex foster home has not been closed, rather, it has been placed on "hold".

I do appreciate the Advocate may admit any evidence including hearsay into his process. In the first example, the ministry is unable to answer to the situation and we are unclear as to what weight we should place on this quote. We also need to understand what weight the Advocate has placed on hearsay in the determination of his findings and recommendations.

Absence of sufficient context and detail:

We have concern in that the report does not give context and detail to the situations that are referenced. The manner and use of vignettes without context may leave the impression the ministry has not attended to these issues, that these situations may be currently unresolved or that the ministry does not have the ability to respond to these issues in a timely and proper fashion. We respectfully suggest that including when these incidents occurred and what action the ministry took to address the situation would strengthen the report.

Mistake of fact and Policy

Upon reviewing your report we believe that some of the ministry's policies may have been misinterpreted and therefore, reported as such. **Appendix "B"** identifies and clarifies these policies for your reconsideration.

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To: Marvin Bernstein, Children's Advocate
January 26, 2009
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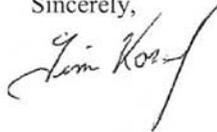
There are some facts the ministry has identified that we believe are in dispute. Additionally, there are facts not reported in your report that Centre Region has undertaken to address the overcrowding issue. **Appendix "C"** is a listing of these facts. We respectfully request you consider these facts in finalizing report.

There is one issue of confidentiality we wish to bring to your attention. The ministry respectfully requests your report further conceal the identity of the 17-year-old child with sexualized, intrusive behaviour. Our position is that there will be too many individuals that will recognize the identity of this child with the various and repeated descriptions currently within the report.

We thank you for giving us an opportunity to respond to your draft report. If you have any questions or concerns please contact me at my Saskatoon office at 933-6034 or on my cell, 221-4259. I will also arrange the appropriate ministry personnel to meet with you should you desire any meetings for clarification.

In the alternative, if you feel you are not in need of any further clarification please advise and we will respond with a suitable letter to bring closure to this phase of the process.

Sincerely,



Tim Korol
Special Adviser to the Deputy Minister

cc: Dr. Allan Hansen, Deputy Minister of Social Services
Garry Prediger, Regional Director, Ministry of Social Services, Centre Region

February 2, 2009

VIA FAX AND ORDINARY MAIL

Mr. Allan Hansen, Deputy Minister
Ministry of Social Services
1920 Broad Street
REGINA SK S4P 3V6

Dear Mr. Hansen:

**Re: Ministry of Social Services' Response to
Foster Home Overcrowding Investigation Report**

Overview

I am writing to acknowledge receipt of the Ministry of Social Services' response to my Office's preliminary Foster Home Overcrowding Investigation Report, a copy of which my Office provided to you on December 22, 2008.

In accordance with my statutory responsibility, I provided the Ministry of Social Services with the opportunity to make representations respecting the preliminary Foster Home Overcrowding Investigation Report on the grounds that the content of the report may adversely affect the Ministry.

I received the Ministry's written response to the preliminary Foster Home Overcrowding Report, dated January 26, 2009, and signed by Mr. Tim Korol, Special Adviser to the Deputy Minister. The Ministry's response identified several issues that it wished to bring to my attention for clarification, or alternatively, to modify or remove from the preliminary investigation report.

After considering the issues that were outlined in the Ministry's letter of response, and after carefully reviewing the investigative facts and analysis with the investigation team, I have concluded that there are no factual errors contained within our preliminary report. I will, however, be correcting the footnotes to ensure that the appropriate pages of Ministry policy are referenced.

I have been surprised by the tone of the Ministry's response and have found this written communication to be argumentative and misdirected, rather than focusing on the merits of our investigation, and the necessary outcomes for the children and youth who are continuing to reside in 'at risk' overcrowded foster homes.

. . .2/

Having said this, I would like to now respond to the concerns asserted by the Ministry regarding the matters of child safety, procedural fairness, mistake of fact or policy, and confidentiality.

Concerns for the Safety of Children

The Ministry's response letter requests that I provide information that would explicitly identify to the Ministry of Social Services the children and/or foster homes cited in cases included in the preliminary report, as it believes that there are potential safety concerns for children and a corresponding need to follow-up on their care.

Throughout this investigation, fears of reprisal by the Ministry were expressed to our investigators. The provision of identifying information regarding informants and the names of particular children/youth in care would only serve to exacerbate those fears, in my estimation. In addition, public policy and relevant legislation would dictate that such disclosure ought not to take place, except in very narrow circumstances.

Just as required of every person, Children's Advocate Office staff members have a duty to report, if they reasonably believe that a child is in need of protection. In the course of this investigation, the investigators reported two instances to the Ministry where they believed that there were ongoing child protection, or quality of care, concerns. In my view, the investigators discharged their duty to report, as required under *The Child and Family Services Act*.¹

Information respecting each scenario included in the preliminary investigation report was obtained from Ministry files to which Ministry personnel should have had access. Information received from foster parents had previously been reported to the Ministry and could be found in Ministry files as well. None of the reported incidents continued at the time of the investigation, and no children reported any specific present concerns regarding their safety.

The confidentiality provisions contained within section 12.5 of *The Ombudsman and Children's Advocate Act*² define the authority which the Children's Advocate has to withhold or release information, as the case may be, obtained in the course of the duties or the exercise of powers pursuant to the Act. The Act specifically states that

12.5(3) Any report the Children's Advocate makes pursuant to this Act shall not disclose the name of or any identifying information about any child involved in an investigation, any

...3/

¹ *The Child and Family Services Act*, Chapter C-7.2, at s.12(1).

² *The Ombudsman and Children's Advocate Act*, 1994, c.7, s.5 at s. 12.5.

parent or guardian of the child or any complainant, except where, in the Children's Advocate's opinion, the interests of any of the following clearly outweigh any invasion of privacy that could result from the disclosure:

- (a) the public;
- (b) any department or agency of government;
- (c) any person.

After reviewing my legislated responsibilities with respect to the Ministry's request to provide identifying information, it is clear to me that the confidentiality provisions of the Act outweigh the threshold for disclosure regarding the concerns that have been raised.

Please note that there are two recommendations contained in this preliminary report, which directly relate to Ministry of Social Services' follow-up on ALL children placed in overcrowded foster homes in the Saskatoon Service Centre area:

4. That the Ministry of Social Services managers in the Saskatoon Service Centre immediately commence the process of reviewing the case plans and status of each child residing in overcrowded foster homes in the Saskatoon Service Centre area, including if appropriate, interviews with those children.
5. That the Ministry of Social Services managers in the Saskatoon Service Centre, upon completion of any interviews, and review of the case plans and status of each child residing in overcrowded foster homes in the Saskatoon Service Centre area, determine appropriate placement matching and foster care resourcing, so that by June 30, 2009:
 - Suitable caregiver supervision relative to the assessed needs of the individual child in the care of the Minister is provided.
 - Protection from further risk of physical, sexual, psychological and/or emotional harm to the child in the care of the Minister is provided.
 - Consideration is given to the age, gender, and physical, psychological, emotional, educational, cultural and/or spiritual needs and development of the child in the care of the Minister, so as to meet or exceed his or her best interests.

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The Ministry's response letter also requests that I identify all the homes which were visited by the investigators and were referenced in our preliminary report, which failed to meet the *Residential Care Services: A Building, Health and Safety Guide* (1999), as well as the guidelines that were breached.

As the investigators visited a random sample of overcrowded foster homes and found 100 per cent non-compliance in those homes, it would be incumbent for the Ministry to assess all overcrowded foster homes to determine whether they are in compliance with their policy and that children and youth are safe. Assessing all overcrowded foster homes would allow the Ministry to meet the requirements of recommendation 17, which states, "that the Ministry of Social Services immediately enforce practices that comply with existing Ministry policy requirements for physical accommodation." As directed in the Children's Services Policy and Procedure Manual, "[e]ach home will be assessed based on *Residential Care Services: A Building, Health and Safety Guide* (1999) and the assessment will be documented." (See Chapter 13)³

General Duty of Fairness

The Ministry's letter of response to our preliminary investigation report raises questions of whether our Office has afforded a duty of fairness with respect to conducting the investigation, or to Ministry staff, based on the contents of the preliminary report.

The duty of fairness, which is contemplated by *The Ombudsman and Children's Advocate Act*, relates to allowing the Ministry to respond to information that may adversely affect it, or to individuals who are named, and thus will be adversely affected. In my view, I have met the requirements of the legislation, in providing the Ministry with an opportunity to respond to the preliminary investigation report, as required. No staff persons were explicitly identified in the report, and accordingly, there is no corresponding duty of fairness, which needs to be exercised in respect of them individually. The information that was provided regarding the example of the 17-year-old child referenced in the Ministry's response letter came from an email contained in the Ministry's own file. The file, as well as the date of the email that contained the information, were identified and the information was provided to your staff.

As well, it should be remembered that while *The Ombudsman and Children's Advocate Act* provides no specific notice period for a response by the affected Ministry to a preliminary investigation report prepared by my Office, I provided the Ministry of Social Services with an exceedingly generous notice period of 45 days in this case.

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³ Family and Youth Services Division, Children's Services Policy and Procedure Manual Chapter 4.4.3 at 37.

I strongly disagree with the statement in the Ministry's letter of response, which says that, "these statements do not have any direct relevance in the determination of the substantive issue of your report 'overcrowding.'" The information that has been reported has come directly from Ministry files, or has been provided by foster parents, children or youth who have been directly impacted by the foster care services that the Ministry has provided. The information provides salient examples of what it is like for children, youth and foster parents, who are affected by the incidents. The information also supports the overriding theme under investigation, which is that children in overcrowded foster homes are exposed to increased risk of harm. The statements are directly related to the investigation and to suggest otherwise, in my view, appears to miss the essential purpose and focus of this investigation.

Hearsay

The rules of evidence that apply to a court of law are not relevant to the completion of this investigation, and further to the production of the ensuing report. The statements which were included in our preliminary investigation report, were provided after careful consideration of the content, and in the context of other supporting information. To suggest that my Office has breached a rule of evidence – which does not apply in these circumstances – and that the statements ought to be struck from our report is misguided, in my view, and would obstruct or delay the completion of the investigation and report. Accordingly, the statements that the Ministry of Social Services asks to be struck from the report will remain as originally stated.

Absence of Sufficient Context and Detail

The investigation team has reviewed the concern the Ministry has raised regarding the lack of sufficient context and detail to the situations referenced in our preliminary investigation report. It is our intention to address this concern by providing more information respecting the examples to ensure that an accurate picture of the incident and the Ministry's response to the situations are provided. Accordingly, the preliminary investigation report will be amended to address the concerns the Ministry has identified to more clearly articulate the actions that the Ministry took, or failed to take, as the case may be.

Mistake of Fact and Policy

The investigation team has carefully reviewed the concern the Ministry has raised regarding the interpretation of Ministry policies and will be incorporating any changes that

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Mr. Allan Hansen, Deputy Minister
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are deemed to be applicable arising out of the items included in Appendices "B" and "C" attached to Mr. Korol's letter.

Confidentiality

The request to "further conceal" the identity of the 17-year-old youth referred to in multiple examples in the preliminary investigation report was duly considered by me; however, I will not be making any changes to the way that the information has been reported, given that there is no identifying information that has been included in the report that risks exposing the youth's identity to the public, and I have concluded that publication of this information would be in the public interest.

Conclusion

Thank you for Mr. Korol's response to the preliminary Foster Home Overcrowding Report.

Based on the response provided by the Ministry, I do not feel that further clarification or meetings are necessary. In keeping with my commitment to provide you with 45 days to respond to the preliminary Foster Home Investigation Report, I am prepared to receive any further response within the 45 day timeframe outlined in my letter of December 22, 2008, which would be by end of business hours on Thursday, February 5th, 2009.

If you have any questions, you can reach me through my Executive Administrative Assistant, Caroline Sookocheff, by calling her at (306) 933-6044. Alternatively, if Mr. Korol or other Ministry representatives wish to discuss any matters related to the preliminary report, they can call either Marcel St. Onge, Director of Investigations at (306) 933-6707, or John Brand, Director of Advocacy at (306) 933-6703.

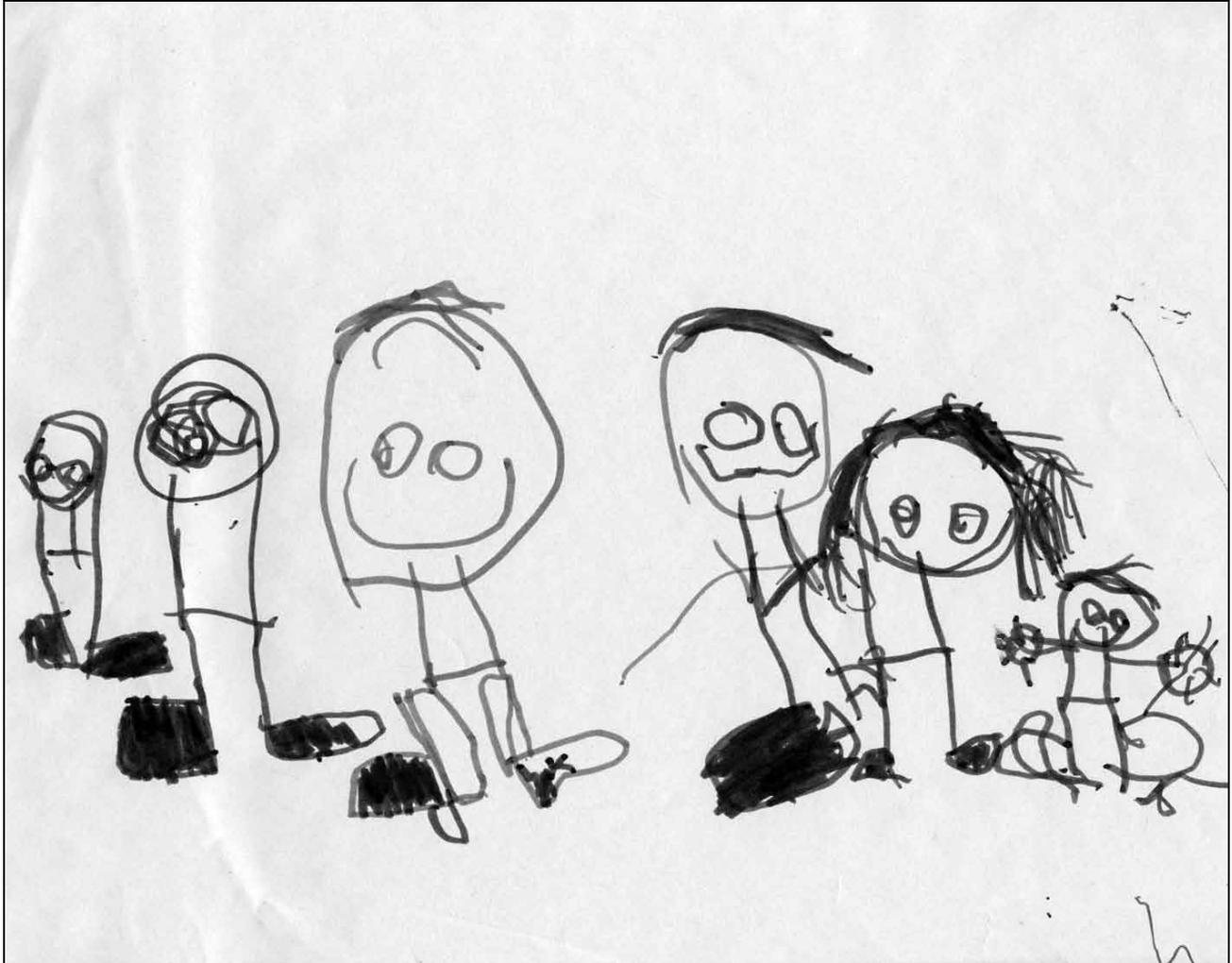
Sincerely,



Marvin M. Bernstein B.A, LL.B., LL.M.
Children's Advocate
Province of Saskatchewan

MMB/ccs

- c. Donna Harpauer, Minister of Social Services
- Gary Prediger, Regional Director, Centre Region, Ministry of Social Services
- Tim Korol, Special Adviser to the Deputy Minister
- Marcel St. Onge, Director of Investigations, Children's Advocate Office
- John Brand, Director of Advocacy, Children's Advocate Office



Billy, a 5-year-old interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture of his foster family.

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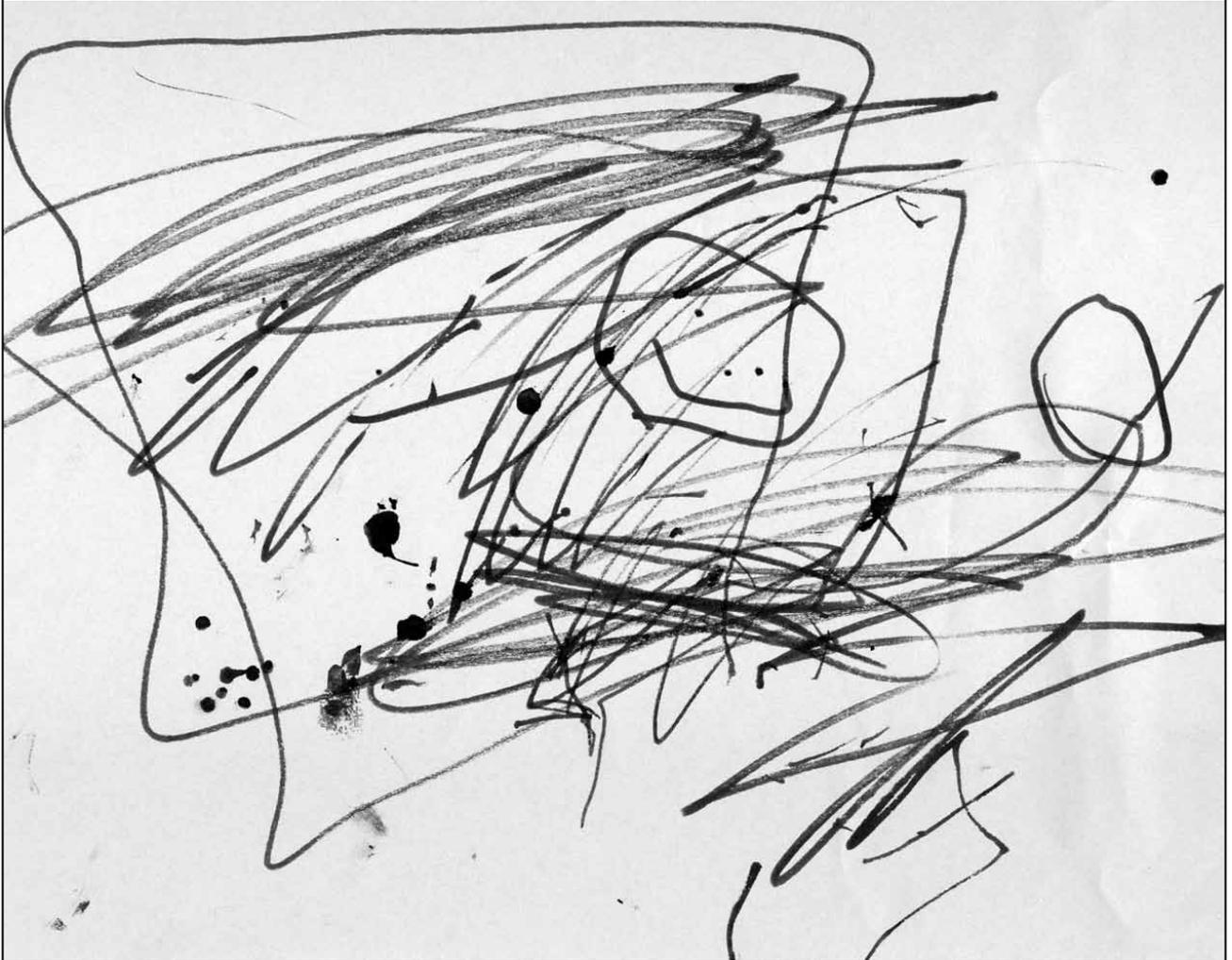
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Jack, a pre-schooler interviewed by Children's Advocate Office investigators who resides in an overcrowded foster home, drew this picture.



A Voice for Youth

315 25th Street East, Saskatoon, Saskatchewan S7K 2H6
Phone: (306) 933-6700 Fax: (306) 933-8406
Toll Free: 1-800-322-7221
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