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A Voice for Youth

Change for Children and Youth

A Submission to the Saskatchewan Child Welfare Review

June 2010

SASKATCHEWAN
children's advocate
OFFICE
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
www.saskcao.ca

SASKATCHEWAN

June 30, 2010

Mr. Bob Pringle, Chair
Saskatchewan Child Welfare Review Panel
14th Floor, 1920 Broad Street
REGINA SK S4P 3V6

Honourable Brad Wall, Premier
Government of Saskatchewan
Room 226, 2405 Legislative Drive
REGINA SK S4S 0B3

Dear Mr. Pringle and Premier Wall:

RE: Children's Advocate Office Submission

Enclosed please find the Children's Advocate Office's submission to the Saskatchewan Child Welfare Review Panel. My staff and I appreciate the opportunity to comment on the issues we deal with on a daily basis within the child welfare system, and to make recommendations to improve it in order to affect better outcomes for children and youth in receipt of government services.

While the impetus for this written submission may have come from the current work of the Panel, we believe, and our legislation mandates, that our recommendations and advice are to be directed to the provincial government and its ministries. Therefore, we have chosen to make this submission simultaneously to the Panel and to the Government of Saskatchewan in order to promote public accountability by tracking and reporting on the progress made in implementing the enclosed recommendations.

Should the members of the Panel require any further clarification on any part of this submission, we would be happy to provide it at any time. Furthermore, we anticipate that meetings with Government and Ministry of Social Services representatives will be held this fall to discuss the issues and recommendations made in this submission and build better understandings as to our intent and expectations.

We are grateful for the work of the Panel and look forward to the release of the final report.

Thank you.

Sincerely,

Marvin M. Bernstein

Marvin M. Bernstein, B.A., J.D., LL.M. (ADR)
Children's Advocate
Province of Saskatchewan

MMB/sje

c. Honourable June Draude, Minister of Social Services

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1 Introduction

1.1 About the Children's Advocate Office

The Children's Advocate Office is staffed by a team of advocates, investigators, and administrative and communications professionals who, under the leadership of the Children's Advocate, work on behalf of the children and youth of Saskatchewan.

Our vision is that the rights, interests and well-being of children and youth in Saskatchewan are respected and valued in our communities and in government legislation, policy, programming and practice.

Our mandate is derived from unique legislation, *The Ombudsman and Children's Advocate Act*, which designates the Children's Advocate as an independent officer of the Legislative Assembly of Saskatchewan.

While we may conduct research or advise any minister responsible on any matter relating to the interests and well-being of children and youth, our efforts focus on the three main functions of our Office:

- **Advocacy** on behalf of a child or group of children to resolve matters through non-adversarial approaches.
- **Investigations** into any matter concerning a child or group of children, or services to a child or group of children by any government ministry or agency.
- **Public Education** to raise awareness of the interests and well-being of children and youth.

These three functions are all interconnected and support the overarching goal of the Children's Advocate Office, which is to create systemic change for the benefit of the children and youth of Saskatchewan.

1.2 About this Submission

Children's Advocate Office staff members have had the privilege to listen to, share information with, support and advocate for over 10,000 children and youth in the 15-year history of our Office.

This submission, as well as our oral presentation to the Child Welfare Review Panel, is informed by the voices of those young people, and our experiences in advocating for their rights and entitlements, investigating their deaths or critical injuries, and educating professionals and the public about the issues that matter most to them.

In crafting this submission, we reviewed and, where appropriate, revised outstanding or deferred recommendations previously made by the Children's Advocate Office to the Government of Saskatchewan and specifically, to the Ministry of Social Services. These appear as "active" recommendations in this submission.

We also reviewed issues and themes repeatedly found in our advocacy work on behalf of individual or groups of children and youth that, if addressed on a broader

systemic basis, could prevent similar cases from occurring again. The recommendations related to these issues appear as "new" in this submission.

The issues we have identified may be related to legislation, policy, programming or practice. However, more often, we have focused on the legislative foundation rather than its interpretation in policy, implementation in programming, or reality in practice.

We believe that the entirety of the child protection system requires examination and change in order to effect better outcomes for children and youth in receipt of government services. However, the fundamentals of good legislation and regulation must come first and foremost.

While the impetus for this submission may have come from the work of the current Child Welfare Review Panel, we believe, and our legislation mandates, that our recommendations and advice are to be directed to the provincial government and its ministries. Therefore, we have chosen to make this submission simultaneously to the Panel and to the Government of Saskatchewan in order to promote public accountability by tracking and reporting on progress made in implementing the enclosed recommendations.

1.3 Acknowledgements

The Children's Advocate Office would like to thank the Saskatchewan Youth in Care and Custody Network (SYICCN), Adoption Support Centre of Saskatchewan (ASCS), Saskatchewan Foster Families Association (SFFA), Pro Bono Law Saskatchewan and the Ministry of Social Services, among other individuals and organizations, for their assistance in providing information and/or referral resources that contributed to our understanding of the issues and the preparation of this submission.

We would also like to thank the members of the Child Welfare Review Panel—Bob Pringle (Chair), Howard Cameron, April Durocher and Carol Skelton—for the opportunity to make an oral presentation on April 20, 2010, and this written submission in June 2010.

Our Office's oral presentation was provided by: Marvin Bernstein, Children's Advocate; John Brand, Director of Advocacy; Rhonda Johannson, Advocate; and Shaun Soonias, Advocate. Our Office's Child Welfare Review Project Team, which conducted research into issues incorporated into this submission, also included: Laura Beard, Director of Public Education and Communications; Leah Bitternose, Investigator; Roxane Schury, Investigator; Christa Shepherd-Hills, Early Resolution Advocate; Marcel St. Onge, Director of Investigations; and Vanesa Vanstone, Investigator.

Administrative support was provided by: Sandi Elliott, Penny Fairburn, Jennifer Kovar and Caroline Sookocheff; and Bernie Rodier, Director of Administration. Other assistance was provided by Connie Braun, Investigator; Melanie Johnson, Advocate; and Chandra LePoudre and Jacqueline Peters, Early Resolution Advocates.

Finally, we wish to acknowledge our clients—the children and youth of Saskatchewan. Our words are formed by your experiences, so thank you for sharing them with us.

2 Children and Youth First

2.1 Implementing the Principles

Issue

In May 2007, the Children's Advocate Office formulated and advanced to the Government of Saskatchewan the *Children and Youth First* Principles. These Principles are grounded in the 54 Articles of the United Nations *Convention on the Rights of the Child*, to which Canada is a signatory. We intended that these Principles would address the need to integrate and enhance a child and youth-centred focus within all aspects of our own service provision, as well as that of the Government of Saskatchewan and its ministries, delegated agencies and care providers.

Following several years of discussions and correspondence with different ministries within the provincial government to further advance adoption and implementation of the *Children and Youth First* Principles, in February 2009, the Children's Advocate Office included a formal recommendation in the report *A Breach of Trust: An Investigation into Foster Home Overcrowding in the Saskatoon Service Centre.*

One of the immediate responses to the release of *A Breach of Trust* was the Government of Saskatchewan's adoption of the *Children and Youth First* Principles. Shortly thereafter, the Premier further reinforced a commitment to provide children and youth within Saskatchewan, and specifically those in care of the Ministry of Social Services, "with the security and opportunities they rightly deserve."[1] He went on to add that, "the well-being of Saskatchewan children and youth is paramount to this government."[2]

Those words written by the Premier to the Children's Advocate Office in March 2009, concisely capture what every child and youth in care wishes for themselves—to be safe and secure; to have their well-being and best interests given paramount consideration; to be provided with concrete opportunities to reach their full potential and overcome their difficult circumstances; and to have their rights and entitlements respected.

Unfortunately, it has been over one year since these commitments were made by the Government of Saskatchewan, with little further discussion or progress made to implement the Saskatchewan *Children and Youth First* Principles as a mandatory guide for child-serving ministries to examine, revise and develop any current and new legislation, policy, programming and practices.

Recommendation

10-16838 (New)

That the Government of Saskatchewan implement the adopted Saskatchewan *Children and Youth First* Principles as a mandatory guide for ministries to examine, revise current, and develop new legislation, policy, programming and practice.

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1 Correspondence between Honourable Brad Wall, Premier of Saskatchewan and Marvin Bernstein, Saskatchewan Children's Advocate, (17 March 2009).

2 *Ibid.*

2.2 Developing a Vision and Action Plan

Issue

In June and November of 2007, the Children's Advocate Office proposed to the Government of Saskatchewan that a *Children and Youth First* Vision and Action Plan should be developed and implemented for Saskatchewan.

Anchored by the *Children and Youth First* Principles, this Action Plan would advance a new purpose and direction within ministries and agencies of the provincial government to transform the 'paper rights' of the United Nations *Convention on the Rights of the Child* into 'lived rights' for Saskatchewan children and youth.

In calling for a *Children and Youth First* Vision and Action Plan, we harkened back to 1994, when the Government of Saskatchewan led the way in focusing on and improving the lives of children by creating an Action Plan for Children. The Plan and its committees laid the groundwork and accomplished a number of significant programs and services directed toward the care and protection of Saskatchewan children and youth.

The vision, beliefs and principles of that Action Plan are impressive and resonate today, including the belief that, "Children have rights and entitlements as defined by the United Nations *Convention on the Rights of the Child*." This is a foundational belief that continues to inspire the work of the Children's Advocate Office.

Although it has been several years since the Action Plan for Children was concluded, it is our opinion that, now more than ever, there is a pressing need to refocus on issues affecting Saskatchewan children and youth—particularly in the areas of legislation, policy, programming and practice relative to child welfare, justice, health, education, and corrections, public safety and policing.

Recommendation

09-14140 (Active; Revised)

That the Government of Saskatchewan develop a well-articulated and integrated *Children and Youth First* Vision and Action Plan that is anchored by the *Children and Youth First* Principles and includes all ministries and agencies that deliver services to children and youth.

2.3 Enhancing Advocacy

Issue

The Children's Advocate Office was opened in November 1994 as one of the many positive outcomes of Saskatchewan's Action Plan for Children. The province's young people have benefited greatly from our Office having one of the broadest legislative mandates in all of Canada that permits us to advocate, investigate, educate and research on matters concerning children receiving services from any government ministry or agency.

What we have found in the ensuing 15 years is that there is so much demand for advocacy on behalf of individual children and youth in care or custody that our efforts to examine and advise on the 'big picture' or broader systemic issues has been limited.

Particularly in the past few years, the demand for advocacy services and public education presentations, as well as the need to research and investigate issues, child deaths and critical injuries, has exceeded our Office's capacity.

Furthermore, following the election of a new provincial government in November 2007, the Premier of Saskatchewan, the Honourable Brad Wall, issued mandate letters to each ministry of the provincial government. In the mandate letter sent to the Minister of Social Services, the Honourable Donna Harpauer, the Premier set out "the clear priorities which are to be addressed" by the Minister, including two points related to the responsibilities of the Children's Advocate Office:

- Request that the Children's Advocate investigate and report publicly on the quality of care in facilities that deliver care to children at risk.
- Provide the Children's Advocate with the authority to undertake random checks of safe houses and other provincially-funded facilities that provide services to children at risk.

In consideration of the Premier's mandate letter and the need to amend *The Ombudsman and Children's Advocate Act* to meet the expectations contained therein, the Saskatchewan Ombudsman and the Children's Advocate discussed any further amendments to the shared legislation governing our two offices that should be recommended to the Government of Saskatchewan.

During those discussions, each independent officer came to the conclusion that now is the time in the history of the offices for the statute to be separated into two distinct pieces of legislation that would recognize each of our unique roles and responsibilities. Once split, the two new pieces of legislation would, at a minimum, retain the statutory authority that each office now enjoys.

In May 2008, the Children's Advocate forwarded to the Ministry of Justice and Attorney General proposed amendments to the legislation governing the activities of our Office. At that time, he requested an opportunity to engage in ongoing dialogue to develop distinct legislation from the Office of the Ombudsman for a newly renamed Advocate for Children and Youth Office. The Children's Advocate also suggested that the Government of Saskatchewan look at analogous legislation in other jurisdictions to best define the amended mandate for our Office.

No further action on this proposal has occurred since that time. Therefore, we have included a recommendation in this submission to raise the profile of these much-needed amendments to child and youth advocacy legislation in our province.

Recommendation

10-16839 (New)

That the Government of Saskatchewan create a separate, independent statute to govern the operations of the Children's Advocate Office that would retain the statutory authority it currently has and amend the legislation as follows:

- Recognize "youth" as a distinct group of children by changing the name of the statute to *The Advocate for Children and Youth Act*.

- Recognize that advocacy services to children and youth is a core function of the Advocate for Children and Youth Office by including in the statute a definition of "advocacy," and conferring the same powers and authority to the Advocate when

delivering advocacy services, as are currently conferred when delivering investigation services, with the exception being that there be no prerequisite notification required when exercising this power and authority under the advocacy function.

- Specify that promoting the rights of children and youth is a core function of the Advocate for Children and Youth Office by adding a statement of purpose in the statute that includes the principles set out in the United Nations *Convention on the Rights of the Child* and that the term "rights" be added to any reference to "interests and well-being" throughout the Act.

- Specify in the statute that children and youth in care or custody, or in receipt of services from the Government of Saskatchewan and its ministries, agencies or delegated service providers, be granted confidential access to and provided information on the existence, role and services of the Advocate for Children and Youth Office.

- Specify in the statute that the Advocate for Children and Youth has jurisdiction over local school boards in respect to those children and youth over whom the Advocate already has pre-existing jurisdiction.

- Specify in the statute that the Advocate for Children and Youth has the power and authority to enter the premises of Government of Saskatchewan ministries, agencies or its delegated service providers unannounced to perform any functions authorized in the Act.

- Clarify that, in addition to providing "advice" to ministers, the Advocate for Children and Youth shall have the authority "to make recommendations" to ministers "on any matter relating to the rights, interests or well-being of children and youth."

- Specify in the statute that the Advocate for Children and Youth has the power and authority to intervene in a proceeding before a court or tribunal involving children and youth where there are broad systemic or precedent implications.

- Increase protection from personal liability for the Advocate for Children and Youth and his or her staff to cover acts of omission, as well as commission.

3 Legislative Foundation

3.1 Definition of “Child”

Issue

Subsection 2(1)(d) (Interpretation) of *The Child and Family Services Act* defines a "child" as, an unmarried person actually or apparently under 16 years of age except where a contrary intention is expressed in the legislation. Subsection 2(1) (Age of Majority) of *The Age of Majority Act* legislates that in Saskatchewan every person attains the age of majority and ceases to be a minor on attaining the age of 18 years.

Therefore, currently in Saskatchewan, youth aged 16 and 17 are without the legal protections of childhood or rights and responsibilities of adulthood. This has led to the denial of, and gaps in, the continuum of programming and service delivery to this vulnerable age group across the full spectrum of government ministries and agencies.

Denial of protection services to 16 and 17-year-olds is also incongruent with the definitions of a "child" in *The Children's Law Act* and *The Ombudsman and Children's Advocate Act*, as well as the definition of “young persons” in the *Youth Criminal Justice Act*.

Article 1 (Definition of the Child) of the United Nations *Convention on the Rights of the Child* defines “child” as every human being below the age of 18 years unless, under the law applicable to the child, the age of majority is attained earlier. This Article is consistent with *The Age of Majority Act* definition of adult in this province and provides clear guidance to the Government of Saskatchewan to determine an appropriate age for the end of childhood in child protection legislation.

In its 15-year history, the Children’s Advocate Office has raised many times the need to clarify the definition of a “child” in provincial legislation and has recommended that it be consistent with the internationally accepted standard of 18 years of age. Most recently, we identified this issue once again in our systemic investigation regarding sexually exploited children and the Oyate Safe House. It was found that 16 and 17-year-old victims of sexual exploitation suffer serious limitations and options in accessing government protection and living supports.

In determining the age at which the protections of childhood end and the responsibilities of adulthood begin, the child's best interests must be a primary consideration and the child's maximum survival and development must be ensured. Therefore, we advise that harmonization of these definitions should be done by raising the age within the definition of child, rather than lowering the age of majority. Harmonization between child protection and age of majority legislation is also found in many other provinces in Canada and throughout the United States.

It is submitted that defining a child as a person under 18 years of age in *The Child and Family Services Act,* would not prevent the Government of Saskatchewan from setting in this, or other legislation, designated ages for the acquisition of particular rights based on a child's evolving capacity to make decisions for themselves, or to extend services to permanent wards who have achieved the age of majority. This recommendation relates to the issue of extending rights of protection for children, not limiting the opportunity for increased autonomy as a child develops into adulthood or

the provincial government's parental responsibility to provide particular entitlements and services to permanent wards beyond the age of majority.

Recommendation

06-10727 (Revised; Active)

That the Government of Saskatchewan amend subsection 2(1)(d) (Interpretation) of *The Child and Family Services Act* (or any legislation replacing this Act) to state the term "child" means, except where a contrary intention is expressed, an unmarried person actually or apparently under 18 years of age.

3.2 Paramount Purpose

Issue

Section 3 (Purpose) of *The Child and Family Services Act* defines that the purpose of the Act is to promote the well-being of children in need of protection by offering, wherever appropriate, services that are designed to maintain, support and preserve the family in the least disruptive manner.

There is something fundamentally askew in this legislative foundation of the child welfare system in Saskatchewan. In virtually every other child protection statute in the country, the stated paramount purpose is some variation of promoting the safety, well-being and best interests of the child, with the phrase "the best interests of the child" always being included in that paramount purpose provision and further defined in a separate section in every one of those statutes.

When reading those definitions from other jurisdictions, the relationship with family, as well as cultural and spiritual considerations, are routinely listed as factors to be considered as part of the overall best interests of the child, but do not take precedence. There must be a specific value that has been identified by the other provinces that has compelled them to institute a dominant child-centred philosophy or purpose in their child protection statutes. Similarly, American child welfare policy has become more definitive about the priority of child protection above family preservation.

In Saskatchewan, *The Child and Family Services Act's* overriding statement of purpose makes no reference to 'the best interests of the child' and equates the well-being of children with the preservation of the family in the least disruptive manner. The end result is that the Act contains a duality that confuses and deflects decision-makers, particularly front line social workers, as to who their primary client is: the parent, the family or the child?

Furthermore, there is currently room in *The Child and Family Services Act* for other considerations to drive decision making and case planning that may or may not result in outcomes that reflect the best interests of the child. For example, there is no requirement to use the determining factors of the child's best interests under section 5 (Family services) of the Act. Similarly, there is no best interests requirement under subsection 8(1) (Interim care, child under 12) when determining interim custody of a child under 12 who commits an offence pursuant to any Act of the Parliament of Canada.

Other examples of selective application of the best interests factors include that the Act does not stipulate a best interests requirement when placing a child into care when entering into a voluntary agreement for residential services under section 9 (Agreement for residential services) except to limit the aggregate amount of agreements to 24 months. Of significant importance is also the lack of direction in subsections 55(1) and (2) (Support by minister) where the Act does not direct that decisions to provide residential services are to be subject to the best interests standards; however, subsection 4(b) in that same section invokes the best interests standards to make decisions to limit services.

The Children's Advocate Office's experience has been that, more often than not, the cause for our involvement originates when a conflict of interest exists between the parent(s) and child, and the child's best interests become secondary, or even worse, are completely disregarded.

Article 3(1) (Best interests of the child) of the United Nations *Convention on the Rights of the Child* states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Entrenching best interests into the paramount purpose of Saskatchewan's child protection legislation is perhaps the most important application of this particular article of the Convention.

When we at the Children's Advocate Office refer to Article 3(1) of the Convention and state that the province must put children and youth first, it is not just a catchphrase. Rather, we state that the best interests, safety and well-being of children and youth must come first in any discussion or decision affecting them, because when decision-makers put other priorities ahead of those factors we have witnessed children and youth being denied their basic human rights, and in many cases, further harmed or victimized by the very system meant to protect them.

To build a better child protection system, we need an improved legislative foundation that includes a paramount purpose provision that states objectively and neutrally that the best interests, safety and well-being of the child is the paramount purpose of the statute and system.

Recommendation

06-10728 (Revised; Active)

That the Government of Saskatchewan amend section 3 (Purpose) of *The Child and Family Services Act* (or any legislation replacing this Act) to state that the paramount purpose of the Act shall be to promote the best interests, safety and well-being of children.

3.3 Other Purposes

Issue

In addition to defining in section 3 (Purpose) of *The Child and Family Services Act* that the paramount purpose is to promote the best interests, protection, safety and well-being of children, it is necessary to define other purposes of the Act that capture, among other considerations, the need to: recognize the unique culture, heritage and

traditions of Aboriginal peoples; provide services to support and preserve families; and provide services to former wards as they transition into adulthood.[3]

These other purposes should not supersede nor compete with the paramount purpose of the Act and should only be considered, so long as they are consistent with the best interests, safety and well-being of children.

Recommendation

10-16840 (New)

That the Government of Saskatchewan amend section 3 (Purpose) of *The Child and Family Services Act* (or any legislation replacing this Act) to state that the other purposes of the Act shall be, among other considerations and so long as they are consistent with the best interests, safety and well-being of children, to provide services to support and preserve families; to provide services to support former wards as they transition into adulthood; and to recognize that Aboriginal people should be entitled to provide, wherever possible, child and family services, and that all services to Aboriginal children and families should be provided in a manner that recognizes their unique culture, heritage and traditions.

3.4 Rights of Children

Issue

Unlike several other jurisdictions in Canada, *The Child and Family Services Act* does not include a specific provision regarding the rights of children. In those other provinces, these rights are not merely buried in policy manuals, but are set out clearly in legislation for judges, lawyers, decision makers and the public to see and apply.

Article 4 (Implementation of Rights in the Convention) of the United Nations *Convention on the Rights of the Child* provides that states parties shall undertake all appropriate legislative, administrative and other measures for the implementation of rights recognized in the present Convention. With regard to economic, social and cultural rights, states parties shall undertake such measures, to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

The Committee on the Rights of the Child has provided detailed guidance on how states may do this:

> "When a state ratifies the *Convention on the Rights of the Child*, it takes on obligations under international law to implement it. … Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental."[4]

In supporting Canada's ratification of the Convention, Saskatchewan is obligated to recognize, promote and protect the rights of children at the provincial level of

[3] Please see section 4 (Family Services), sections 6 (Delegated Service Delivery), and section 9 (Transitioning into Adulthood) of this submission for detailed discussion of these other purposes of Saskatchewan's child protection legislation.

[4] Committee on the Rights of the Child, *General Comment No. 5* (2003) at paras. 1 and 2.

government. While it is important that all child-serving systems do this, there is no more important a task than in defining those rights in child protection legislation that serve as the foundation for the best interests, safety and well-being of our most vulnerable citizens—those children and youth who are victims of neglect, abuse and/or abandonment by their families of origin.

It is the belief of the Children's Advocate Office that grounding provincial legislation and Ministry of Social Services policy in the articles contained in the United Nations *Convention on the Rights of the Child* is a critical factor in ensuring that children receive the services to which they are entitled.

While we have already referred in subsection 2.1 of this submission to the adoption of the *Children and Youth First* Principles by the Government of Saskatchewan in February 2009, and the current need for further implementation across all child-serving ministries, the Principles can only be given real substance and authority in the child protection system if they are incorporated into *The Child and Family Services Act*, where they will have the weight of law.

Recommendation

09-14143 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision on the rights of children as recognized in the United Nations *Convention on the Rights of the Child* that includes the Saskatchewan *Children and Youth First* Principles.

Saskatchewan *Children and Youth First* Principles

All children and youth in Saskatchewan are entitled to:

1) Those rights defined by the United Nations *Convention on the Rights of the Child.*
2) Participate and be heard before any decision affecting them is made.
3) Have their 'best interests' given paramount consideration in any action or decision involving them.
4) An equal standard of care, protection and services.
5) The highest standard of health and education possible in order to reach their fullest potential.
6) Safety and protection from all forms of physical, emotional and sexual harm, while in the care of parents, governments, legal guardians or any person.
7) Be treated as the primary client, and at the centre, of all child-serving systems.
8) Have consideration given to the importance of their unique life history and spiritual traditions and practices, in accordance with their stated views and preferences.

3.5 Definition of "Best Interests"

General Comment

Section 4 (Child's best interest) of *The Child and Family Services Act* states that where a person or court is required by any provision of this Act other than subsection

49(2) to determine the best interests of a child, the person or court shall take into account:

(a) the quality of the relationships 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 for 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; and
(h) the effect on the child of a delay in making a decision.

This section of *The Child and Family Services Act* describes the important factors decision-makers shall currently consider, under some designated provisions in the Act, when providing protection services to a child or youth in Saskatchewan.

When, as recommended by the Children's Advocate Office in subsection 3.2 (Paramount Purpose) of this submission, the Government of Saskatchewan amends *The Child and Family Services Act* (or any legislation replacing this Act) to state that the paramount purpose of the Act shall be to promote the best interests, safety and well-being of children, a careful review of section 4 of the Act by the Government of Saskatchewan becomes exceedingly important.

These best interests factors will become generally applicable to all sections of the Act, therefore, they should fully and purposely reflect our provincial beliefs and values as to what is in the best interests of the child. In Saskatchewan's case, that may be an added emphasis on familial, cultural and spiritual considerations based on the unique needs of our Aboriginal population.

3.6 Accountability

Issue

The Child and Family Services Act does not have any accountability provisions built into the legislation so as to require that the Minister of Social Services conduct regular reviews of child protection legislation, policy, programming or practice in Saskatchewan. It is clear from the history of the child protection system in our province during the past two decades that these types of public reviews will not occur without the authority of law behind them.

The Children's Advocate Office has frequently addressed the issue that children and youth experience time much differently than adults, and that deferrals and delays in case planning and decision-making in their individual cases can have lifelong impacts on their social, health, education and economic outcomes.

On a systemic level, deferral and delay in addressing broader legislative, policy, programming and practice issues can have an even greater impact on all children and youth in the province. While the Children's Advocate Office engages in advocacy on these issues and makes numerous recommendations every year as a result of investigations into child deaths, critical injuries and systemic issues, the majority of these recommendations are deferred until some unknown future date when a legislative review would take place.

It has been over 20 years since the last formal review of the child protection system in this province. That delay has negatively impacted too many generations of children and youth who have come into care of, or have received services from, the Government of Saskatchewan, for us not to address this issue in this current review.

Recommendation

10-16841 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision that the Minister of Social Services conduct a public review of the Act within five years after this new section or Act comes into force.

10-16842 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision that the Minister of Social Services establish an advisory committee, made up of two persons who are receiving or have received services under the paramount purpose of the Act; two persons from First Nations or Métis communities; a legal aid lawyer; and a representative of the Minister, whose function is to review every five years the operation of the Act and to report to the Minister concerning its operation and stating, whether, in its opinion, the paramount purpose, other purposes, and rights of children in the Act are being achieved.

10-16843 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision that the Minister of Social Services establish biannual meetings with the Children's Advocate to review the operation of the Act and for the Children's Advocate to report annually to the Minister concerning its operation and stating, whether, in his or her opinion, the paramount purpose, other purposes, and rights of children in the Act are being achieved.

3.7 Modernization of Language

Issue

The Child and Family Services Act and its interpretation in policy, programming and practice uses language that confuses, stigmatizes, dehumanizes and disempowers children and youth.

For example, children are often referred to as files or cases, or talked over and about when participating in difficult case planning conversations. Within the legislation and policy, terms such as "apprehension," "taken into custody" or "committal" are found,

but are more applicable to criminal or mental health systems than one designed to protect children and youth ("protection" itself is a paternalistic term that we are wary of, yet we have not found an appealing alternative that still captures the paramount purpose of the system).

In other cases, we have observed unnecessary confusion for children and youth, or they are caught in a conflict with biological parents, when paid caregivers are called "mom," "dad," or "parents." This is not to diminish the importance of these caregivers in the lives of the child or youth; however, there are other options, such as in Britain, where they have distinguished these caregivers from a child's biological or adoptive parents by calling them foster carers or foster caregivers.

It is also interesting to note that in Ministry of Social Services policy stemming from *The Child and Family Services Act*, terminology switches from the generic "child or youth in care" to the more legalistic "long-term or permanent ward" depending on their legal status within the system. This terminology may be necessary within the courts, but surely there is a more personal, humane way of capturing this change in legal status that does not "label" a child. Using terms such as "child in care under a permanent order" or a "youth in long-term care of the Minister" may be better alternatives.

The impacts of such labels can be devastating to children and youth who are healing from the neglect, abuse and/or abandonment of their families of origin. We must change the lexicon in the system, to better affirm to children and youth that they are not offenders, victims, or the property of others, but rather individuals full of potential for achievement and success in each of their own ways.

Recommendations

10-16844 (New)

That the Government of Saskatchewan consult with the Saskatchewan Youth in Care and Custody Network (SYICCN), the Federation of Saskatchewan Indian Nations (FSIN), the Métis Nation-Saskatchewan, the Children's Advocate Office, and educational and professional experts to review *The Child and Family Services Act* (or any legislation replacing this Act) to identify and propose alternatives to words that carry the risk of confusing, stigmatizing, dehumanizing and disempowering children and youth who receive services from the child protection system.

10-16845 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to exclude words that carry the risk of confusing, stigmatizing, dehumanizing and disempowering children and youth who receive services from the child protection system.

4 Family Services

4.1 Assessing and Resourcing Needs

General Comment

Section 5 (Family services) of *The Child and Family Services Act* states that the Minister of Social Services may:

> (a) establish, operate and maintain family services;
> (b) provide family services to or for the benefit of a parent or a child where the minister considers them essential to enable the parent to care for the child;
> (c) enter into agreements with any person providing family services by which the minister is obliged to make payments for the provision of family services pursuant to this section.

While the Children's Advocate Office's primary focus has become serving child and youth clients once they have come into the care of the Minister of Social Services, we, like other professionals involved in the child protection system, have commented repeatedly during the past 15 years about the limited planning, resourcing and delivery of preventative services to families, children and youth.

Over a decade ago, the Children's Advocate Office's *Children and Youth in Care Review: LISTEN to Their Voices Final Report* identified that,

> "Lack of funding to establish family support programs on reserves is seen as a major reason why large numbers of children are being brought into care by FNCFS agencies. Many people identified a link between inadequate early support for a troubled family and the entry of children in the Young Offender (YO) system."[5]

Interviews conducted during the Children and Youth in Care Review with youth, parents and professionals in a variety of fields found the following key issues in regard to the delivery of family services:

- Delays in getting referrals and appointments for mental health counseling, addictions treatment, parenting assistance and other family support services.
- Lack of integrated service delivery from, and access to, various systems such as education, health and social services.
- Lack of assistance unless a family is in complete crisis and breakdown.
- Need for more preventative supports to families and children in general, and protection of those funding sources and programs already in place.

We believe that the issues revealed in that report are much worse a decade later. The Government of Saskatchewan continues to invest primarily in post-apprehension residential resource development to treat the problem of more and more children and

[5] Saskatchewan, Children's Advocate Office, *Children and Youth in Care Review: LISTEN to Their Voices Final Report* (April 2000) at 118.

youth coming into care, while rarely assessing or adequately resourcing comprehensive programming that may prevent those same children and youth from coming into care.

As recently as last year in our *A Breach of Trust Report*, the Children's Advocate Office identified that prevention, early intervention and differential response programs were limited and that this inadequate programming was compounded by on-reserve and off-reserve funding disparities and jurisdictional tensions.[6]

We believe that any recommendation made by our Office would fall short of the true need for planning, programming and funding in this area of the child protection system. Therefore, we will simply advise, once again, that the Government of Saskatchewan needs to assess and resource preventative programming on a much broader scale than ever done before in this province if it is to ever solve the chronic crisis of under resourcing and too many children and youth coming into care of the Minister of Social Services.

4.2 Equitable Access and Support

General Comment

Aside from the limited prevention programming available to support families and prevent children and youth from coming into care, the Children's Advocate Office has long advised the Government of Saskatchewan that access to what preventative supports there are has been offered inconsistently and sporadically to proactive requests by families on the verge of crisis or when those families are in crisis and their children are being brought into or are in care.

A file review conducted as part of the Children and Youth in Care Review in 2000 found that, in 17 per cent of the files, family support services were not offered or provided prior to the children and/or youth being brought into care by the then Department of Community Resources (now Ministry of Social Services).[7]

A more recent consideration of the Children's Advocate Office's individual advocacy cases found several instances where Ministry of Social Services front-line staff were unaware of section 5 (Family services) of *The Child and Family Services Act,* and therefore, were unaware of the potential for the Ministry to offer services to the family.

[6] Saskatchewan, Children's Advocate Office, *A Breach of Trust: An investigation into Foster Home Overcrowding in the Saskatoon Service Centre* (February 2009) at 5.

[7] *Supra* note 5 at 119.

5 Direct Service Delivery

5.1 Assessing and Resourcing Needs

General Comment

The Children's Advocate Office has frequently highlighted in our annual and special reports the issue of Ministry of Social Services' poor staff morale and their inability to comply with legislation and policy due to under resourcing of both financial and human resources in the Ministry of Social Services.

In 2000, the Children and Youth in Care Review raised the issue of overloaded and overworked Ministry of Social Services workers and supervisors:

> "…there are increasing demands on the DSS [Department of Social Services] without proportional increases in workers. The quality of service provided is affected when workers do not have time to do their jobs well."[8]

In 2009, we discussed the long-standing "culture of non-compliance" in the Ministry of Social Services in *A Breach of Trust: An Investigation into Foster Home Overcrowding in the Saskatoon Service Centre*:

> "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."[9]

Since the release of *A Breach of Trust*, the Children's Advocate Office has requisitioned information on caseloads from the Ministry of Social Services as part of two individual child death investigations. While it would be premature for us to report our findings in those cases, what we can offer is the observation that cases reviewed and reports made by Ministry of Social Services front-line workers to our Office of exceptionally high caseloads over the past five years have been confirmed.

To provide a context for how severe the caseload problem has become in Saskatchewan, we routinely find in file reviews, or reports to our Office by Ministry front-line workers, family services and child care worker caseloads exceeding 40 or 50 for an individual employee. We have also received reports of practicum students and newly hired front-line workers receiving caseloads of 30-40 immediately upon joining the Ministry of Social Services.

The case file and anecdotal evidence of high caseloads, overworked staff, minimal worker supervision and their impact on service delivery to children and youth is compelling considering that those family services and child care worker caseloads of

8 *Supra* note 5 at 32.
9 *Supra* note 6 at 51.

30-50 compare to recommended standards by the Child Welfare League of America (CWLA) of 12-15 children or 17 families per one worker.[10]

Furthermore, in several cases, we have found a Release from Liability form on family services and child care files where the caseworker has notified their supervisor that they are unable to cope with the excess workload and execute their mandated duties with respect to all of their clients.

These forms indicate that copies were sent to the SGEU, Out-of-scope Manager, and the Minister of DCRE (now Minister of Social Services); however, we have not confirmed whether these individuals are receiving this information and we do not know how extensive these forms are being used by Ministry front-line workers to document their inability to cope with their workloads.

When we requisitioned materials on caseloads from the Ministry of Social Services, we were hoping to see statistics and analysis of this issue as part of ongoing strategic planning and budget requests. What quickly became apparent in our examination of this material is that the issues of caseloads, workloads and adequate supervisor to caseworker ratios are not fully understood by the Ministry either.

Over the years, many projects, assessments, working committees and studies have been started, then stopped due to a myriad of factors, without any concrete plan developed to meaningfully communicate to government decision-makers at the highest levels the full scope and impacts of the issue.

The CWLA cautions that, "Computing caseloads is an inexact science,"[11] and "When in doubt, err on the side of safety."[12] CWLA standards are intended to be goals for continuing improvement of services and represent those practices considered to be most desirable in providing services to children and their families.

As found in our *A Breach of Trust* report, Ministry of Social Services regional managers have understood the magnitude of the challenges posed by the number of children that have or are projected to come into care.[13] Repeated budget submissions were made to obtain finances to hire additional staff, as well as develop the required resources and services, but there appeared to be no political will to respond to these needs assessments and invest at the levels required in the child protection system.

This duty of provinces to those children in care, or who are receiving services under child protection legislation, is best described by the Auditor General of Ontario:

> "While provision of services in most other ministry programs is subject to availability of funding, in the Child Welfare Services Program, each Society must, by requirements of the Child and Family Services Act, provide all mandatory services to all identified eligible children. In other words, a child requiring protection must not have to wait for service due to funding constraints."[14]

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10 Child Welfare League of America, Caseload Standards (retrieved 23 June 2010) http://www.cwla.org/programs/standards/caseloadstandards.htm

11 Child Welfare League of America, Guidelines for Computing Caseload Standards (retrieved 23 June 2010) http://www.cwla.org/newsevents/news030304cwlacaseload.htm

12 *Ibid.*

13 *Supra* note 6 at 44.

14 Ontario, Office of the Auditor General of Ontario, *2006 Annual Report*, Section 3.01-Child Welfare Services Program at 34.

The Ministry of Social Services' immediate response to the issues identified in *A Breach of Trust* did not acknowledge staffing shortages and resulting high caseloads that have contributed to lower standards of service delivery to children and youth in this province. Significant public funding commitments were made to develop additional residential resource capacity, but there has been no comparable public funding commitment made to develop additional human resource capacity.

It is imperative that within this climate of potential discouragement and anxiety, that child protection workers be supported and empowered in their work. One way of achieving this goal is through professionalizing child protection work and encouraging child protection staff with social work degrees to take the necessary steps to strengthen their professional identification and represent themselves as social workers by becoming members of the Saskatchewan Association of Social Workers (SASW).

We cannot emphasize enough the importance of providing better standards of case management and contact with children, youth and their families in Saskatchewan's child protection system. Ministry of Social Services front-line workers must be given reasonable expectations and opportunities to meet the requirements of provincial legislation and policy, and provided frequent and consistent supervision and guidance as they carry out this often stressful and vicariously traumatizing work.

Also, there needs to be widespread recognition and commitment that the well-being of children and youth in this province is a shared responsibility by all ministries and agencies of the Government of Saskatchewan.

Many times, the Ministry of Social Services and its staff bear the burden of not only coordinating integrated case management, but also having to convince other service providers in government to step up and respond to a child or youth's specialized needs. If Ministry caseworkers do not have the time or resources to do this, inevitably that burden becomes the responsibility of the Children's Advocate Office once the child or youth has fallen into crisis. Certainly, with all of the collective resources available in our province, we can do better for our young people in care.

5.2 Legislating Caseloads and Supervisor to Caseworker Ratio Maximums

Issue

The Children's Advocate Office believes that the long-standing and habitual overloading of child protection worker caseloads and the current supervisor to caseworker ratios in the Ministry of Social Services must be addressed now for any legislative, policy, programming and practice changes to be successful in the future. The ideals of delivering child protection services will never be met, if poor staff morale, high staff turnover, and the inability to recruit and retain well-trained and experienced staff continue to dominate the workplace culture of the Ministry.

The Government of Saskatchewan has had numerous opportunities to address this issue over the past two decades, but the political will has not been found to effectively solve the human resource problems found in the Ministry of Social Services. Successive governments have disconnected the assessed needs of the child protection system from the planning and budgeting cycle time and time again, which leaves managers, supervisors and front-line workers consistently short of

financial and human resources to meet the expectations found in child protection legislation and policy.

Other jurisdictions in Canada and the United States have, and continue to struggle with, the same issues. However, a preliminary review finds that some child protection systems inherently succeed, when caseloads and supervisor to caseworker ratio maximums have the weight of law behind them.

For example, in the mid 1990s, the State of Delaware Department of Services for Children, Youth and their Families fell under intense public, media and legislative scrutiny when high caseloads and poor staff morale was linked to several deaths of children in care.[15] Child and youth advocacy groups, employee unions, legislators and the public advocated for the caseload standards to be entrenched in child protection legislation in conjunction with renewed recruitment and retention initiatives.

By 2001, the Delaware Department of Services for Children, Youth and their Families was able to develop: a new vision, *Think of the Child First*; a new mission, to focus on leadership and advocacy; and strategic initiatives, including creating a child focused system, holistic services, an inspired workforce, leading edge management, and dedicated partnership. By 2004, the Department experienced dramatically reduced employee turnover (from 48 per cent in 1998 to six per cent in 2004), improved employee morale, increased teamwork across functions, and improved quality and consistency in delivering child protection services.

We use this example as but one of where–with the collective support of advocates, employees and their unions, political representatives and the public–a system mired in a resource crisis can change. The foundation of that change was built when caseloads and supervisor to caseworker ratio maximums were legislated and government became legally responsible to resource the system to meet those standards.

Recommendations

10-16846 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) or its regulations to include a provision that defines maximum supervisor to caseworker ratios and caseload standards for all workers within the child protection system depending on their experience (i.e., smaller caseloads for practicum students, and incremental growth in caseload for new workers) and function of their jobs (i.e., whether their primary function is on intake and investigation, or providing services to families, children in care or foster homes).

10-16847 (New)

That the Government of Saskatchewan assess and, if necessary, increase the allocation of financial and human resources to the Ministry of Social Services so as to meet legislated or regulated supervisor to caseworker ratios and caseload standards.

[15] Delaware, The Department of Services for Children, Youth and their Families, *Size Matters: Achieving Optimal Caseloads for Child Welfare Workers*, CWLA National Conference (2004).

5.3 Orientation, Training and Professional Development

Issue

In 2000, the Children and Youth in Care Review raised the issue of training and orientation for social workers:

> "The Review Team heard that workers are not necessarily well informed about DSS policies and standards. Training programs that exist may be good; however, not every worker has taken the training."[16]

At that time, the Children's Advocate Office recommended that Ministry of Social Services staff be provided with the training, support and time needed to carry out their obligations; and that a mandatory, extensive orientation and training program be completed by all new employees before they assume responsibility for child protection services.

While significant strides have been made by the Ministry of Social Services to provide "Core Training" to new and existing staff, Ministry professionals continue to raise with our Office the need for more specialized, frequent and ongoing education and training to properly prepare them for the daily challenges of child protection work.

Furthermore, we have seen numerous cases in both our advocacy and investigations work where practicum students and newly hired employees' lack of specialized child protection training and supervision have contributed to poor outcomes for children and youth. It has also been raised with our Office, that performance management processes, such as the Public Service Commission's Planning for Success Program, have not been implemented in the Child and Family Services division of the Ministry of Social Services.

Recommendations

10-16848 (New)

That the Ministry of Social Services consult and partner with schools of social work and other related human service educational institutions to develop interdisciplinary curricula that will furnish the professional skills and knowledge required to work in the Ministry of Social Services Child and Family Services Division.

10-16849 (New)

That the Ministry of Social Services expand the orientation program for practicum and newly hired employees to provide extensive, specialized training on provincial child protection legislation, policies, programs and best practices before they assume responsibility for any caseload; and increased supervision upon receiving their caseload.

[16] *Supra* note 5 at 28.

10-16850 (New)

That the Ministry of Social Services expand the Core Training Program for all child protection staff to provide extensive, specialized ongoing training on provincial child protection legislation, policies, programs and best practices.

10-16851 (New)

That the Ministry of Social Services implement the Public Service Commission's Planning for Success Program for all staff and managers within the Child and Family Services Division, including making available and accessing all resources and supports available from the Commission.

6 Delegated Service Delivery

6.1 First Nations Child and Family Services

Issue

In subsection 3.3 of this submission, we address the current issue of the conflicting duties owed to both the child and the child's family under *The Child and Family Services Act*. When an Aboriginal child is involved in the child protection system, a third party, the community or First Nation, becomes involved in the processes and decision making too.

As there is a well-known over-representation of First Nations and Métis children within Saskatchewan's child protection system, this reality affects over 80 per cent of all children and youth in care or receiving services from the Ministry of Social Services or the 18 First Nations child and family services agencies. This means that a similar percentage of children and youth receiving services from the Children's Advocate Office are Aboriginal as well.

Five per cent of Canada's child population is Aboriginal, compared with 25 per cent of Canada's child-in-care population. So while there is significant over-representation of Aboriginal children in care nationally, the situation is much more acute in Saskatchewan, where 80 per cent of children in care are Aboriginal compared with 25 per cent of the child population being Aboriginal on the whole.

We understand the historical, as well as the current political, economic and social causes for this over-representation. However, these factors cannot unduly influence case planning for children and youth today. Too often, our role as an advocate for children and youth is to re-focus among these competing parties, goals and aspirations, on the heart of the discussion—the individual best interests and needs of children who have been found to be in need of protection from neglect, abuse and/or abandonment.

While there is much good work going on across Saskatchewan in many of the First Nations agencies, there exists a gap between the collective aspirations of First Nations and Métis peoples and their current capacity to successfully deliver those services to children and youth. Preserving a child's connection to their community, culture and heritage should be in addition to the paramount purpose of the child protection system, which is to ensure children are safe while working in their best interests and recognizing their human rights at the same level all children and youth are entitled to in this province.

The protection bar for an individual child or youth should never be lowered to accommodate the economic or political aspirations or needs of a community. Children are in the center of the circle to be protected; not to be used as economic and employment drivers or as pawns within a larger political debate. They cannot be what they have so often become in this province and in this country—the battleground upon which the differences between Canada and First Nations have been fought.

Since child protection services is a provincial jurisdiction, the province's 18 First Nations child and family services agencies receive their authority to operate from the Government of Saskatchewan and, therefore, they are expected to function in a

manner consistent with provincial child protection legislation. This is a delegated system of service delivery that maintains the legal responsibility for all children and youth receiving in-home or out-of-home services, whether on or off reserve, with the Ministry of Social Services. However, child and family services delivered on reserve are funded federally through Indian and Northern Affairs Canada (INAC).

It should be noted that the funding provided by INAC to First Nations agencies to deliver services on reserve is significantly less than provincially-funded services delivered off-reserve by the Ministry of Social Services. This impedes First Nations child and family services agencies' ability to provide the same prevention and early intervention services on reserve. Addressing this federal/provincial funding inequity would be a good first step in improving delegated service delivery by First Nations child and family services agencies.

In individual advocacy cases, the Children's Advocate Office has identified significant concerns regarding services delivered through many First Nations child and family services agencies. In some cases, the agency and/or band does not acknowledge or address these issues. Even more concerning is that the Ministry of Social Services rarely assumes its fiduciary duty to intervene, support or resolve these matters when that occurs.

Unfortunately, the Ministry has demonstrated its own inability to model best practice, or to comply with what is essentially a strong legislative and policy framework in Saskatchewan. Consequently, it has been inconsistently able to assume its requisite role, as mentor to our burgeoning First Nations child protection agencies. Too often, First Nations and Métis children and youth have been denied their basic human rights and legislated entitlements when they are in need of protection, due to the lack of trust, cooperation, understanding and capacity on the part of both the Ministry of Social Services and the delegated First Nations child and family services agencies.

Recommendation

10-16852 (New)

That the Government of Saskatchewan create a 'common table' where the provincial and federal governments, the Federation of Saskatchewan Indian Nations (FSIN), the Children's Advocate Office and other stakeholders can work together to identify areas of common concern, validate baseline data, and develop collaborative solutions to improve child protection services on reserve.

6.2 Community-Based Organizations, Facilities and Programming

General Comment

Community-based organizations that run residential facilities and provide programming to children and youth receiving services in the child protection system have a similar delegated service relationship as between the Ministry of Social Services and First Nations child and family services agencies. Funding and support is provided from the Government of Saskatchewan to these organizations under the auspices of section 59 of *The Child and Family Services Act*, which states that the minister may enter into agreements with any person, agency, organization, association, institution or body inside or outside Saskatchewan for any purpose related to the exercise of any of the

powers or the carrying out of any of the duties or functions assigned to the minister by or pursuant to the Act.

As with many First Nations child and family services agencies, there is much good work being accomplished across the province by community-based organizations that provide in-home and out-of-home services to children, youth and their families. However, also similarly, there are community-based service providers that struggle with placing the child or youth client at the centre of their service delivery, have ongoing trouble recruiting and retaining staff with appropriate educational backgrounds and professional experience, and fail to establish effective governance systems and delivery services that meet the fiduciary responsibilities outlined in Saskatchewan's child protection legislation.

6.3 Licensing and Accreditation of Residential Resources

Issue

Residential resources, such as group homes, and stabilization and treatment facilities, provide care for children and youth that should be beyond that available in a regular or therapeutic foster home. In Saskatchewan, these resources may be operated by the Ministry of Social Services, or delegated First Nations child and family services agency or community-based organization.

Over the past three decades, repeated advocacy interventions and investigations completed by the Saskatchewan Ombudsman, the Children's Advocate Office and the Provincial Auditor have highlighted the need for these residential resources to be licensed, and programs held to a high standard of care through a process of independent accreditation.

Subsection 2(h) of *The Residential Services Act* exempts residential facilities operated under the jurisdiction of the Ministry of Social Services from the regulatory structure for other residential facilities in Saskatchewan:

> "**residential-service facility**" means a facility incorporated pursuant to *The Non-profit Corporations Act*, *The Co-operatives Act* or a private Act of the Legislature that provides lodging, supervision, personal care or individual programming for persons who:
>
> (i) by reason of need, age or disability, or for any other reason are unable to care fully for themselves;
> (ii) require safe shelter and counseling appropriate to their circumstances; or
> (iii) where a corporation, other than a co-operative, conducts or operates a facility, are not members of the management of the facility;
>
> but does not include daycare 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.

Currently, standards of care for our most vulnerable citizens, children and youth, are left up to the Ministry of Social Services to define in policy. Without the force of law or

even meaningful sanctions or consequences for breaches of policy behind them, these standards are not being met in many residential facilities in Saskatchewan. Placing standards into legislation and/or regulation would compel the Ministry and its delegated agents to follow the directive or be held accountable for any transgressions.

Licensing of residential facilities for children and youth should set minimum standards for the physical and developmental safety of children and youth into regulations that have the weight of law. Accreditation of residential facilities should set higher standards of care for children and youth through an independent review of the organization's governance structures and finances, as well as its services and programming for its clients.

Accreditation of residential resources has been common in the United States for many decades; however, it is just beginning to catch on in Canada. British Columbia has mandated, within the last decade, that child and family services must be accredited in all cases where an agency receives more than $500,000 per year from the province. The province has committed to fund initial accreditation costs. Alberta requires certification of programs, rather than accreditation, where certification is a somewhat less rigorous requirement. Other provinces, such as Ontario and Manitoba are exploring accreditation options, and Quebec has its own extensive system of licensing and accreditation already in place.[17]

The exemption of residential facilities from a regulatory structure, coupled with the minimal accountability imposed when organizations fail to deliver on agreements entered into with the Ministry of Social Services, has led few organizations to seek accreditation on their own in this province. The Children's Advocate Office is aware of only two delegated agencies, the Lac La Ronge Indian Child and Family Services Agency and the Ranch Ehrlo Society, that have sought independent accreditation for their programs and services.

It is not surprising that both of these delegated agencies of the Ministry of Social Services are often held up as examples of how to effectively deliver services to children and youth in Saskatchewan. The accreditation process, which assesses an organization's performance against established industry standards, takes a significant commitment by all involved to complete, and requires a level of awareness and acknowledgement by the organization that they should go beyond the minimum standards to serve their clients.

Recommendations

10-16853 (New)

That the Government of Saskatchewan amend *The Child and Family Services Regulations* to require the Ministry of Social Services or its delegated agencies' residential child care facilities to be licensed to meet standards for physical and developmental safety including placing maximum limits on the number of children that are to be placed in each type of licensed residential care facility.

10-16854 (New)

That the Ministry of Social Services mandate and fund independent accreditation of all residential resources operated by the Ministry, First Nations child and family services agencies, and community-based organizations in Saskatchewan.

[17] Allan, Dr. John R., *Canadian Human Services Accreditation Environmental Scan Interim Report*.

7 Protection

7.1 Definition of "Child in Need of Protection"

Issue

Subsection 11(a) (Child in need of Protection) of *The Child and Family Services Act* does not explicitly state that "neglect" is just cause for a child to be in need of protection. Social Science research has demonstrated that the effects of child neglect can be just as harmful and insidious as the effects of child abuse.

Currently in *The Child and Family Services Act*, the definition of when a child is in need of protection focuses on symptoms of the child, rather than the behaviors of the caregivers, which put children at risk. For example, there is no mention of chronic neglect, significant alcohol and/or drug usage, significant mental health problems or significant impaired parental capacity as grounds for a child to be in need of protection in this province.

Subsection 11(a)(iii) (Child in need of Protection) of *The Child and Family Services Act* also states that, "a child is in need of protection where: as a result of action or omission by the child's parent: the child has been or is likely to be exposed to harmful interaction for a sexual purpose, including involvement in prostitution and including conduct that may amount to an offence within the meaning of the *Criminal Code*."

The term "prostitution" implies that children and youth are the wrongdoers engaging in criminal conduct rather than the fact that they are victims of sexual exploitation and abuse.

The Children's Advocate Office's investigation regarding sexually exploited children and the Oyate Safe House found that there is a detrimental effect on services delivered to exploited children and youth due to inappropriate language and attitudes within the child protection system. The mislabeling and documentation in case files of sexually exploited children and youth using language that describes them as criminals or consenting as if they were adults is inherently derogatory and discriminatory.

As detailed by the Subgroup Against the Sexual Exploitation of Children, NGO Group for the *Convention on the Rights of the Child* in 2005, "Children can never consent to being exploited and abused, therefore they should never be considered as 'sex workers' or labeled as 'child prostitutes'."[18]

Recommendations

<u>10-16855 (New)</u>

That the Government of Saskatchewan amend in *The Child and Family Services Act* (or any legislation replacing this Act) the definition of "child in need of protection" in subsection 11(a) to protect children and youth from neglect by:

[18] Subgroup Against the Sexual Exploitation of Children, NGO Group for the *Convention on the Rights of the Child*, *Semantics or Substance? Towards a shared understanding of terminology referring to the sexual abuse and exploitation of children* (2005) at 62.

1) Revising the section to include, "the child has suffered or is likely to suffer physical or emotional neglect."
2) Adding a definition for "neglect" within this section and a list of caregiver behaviours or conditions that may be considered in determining if child neglect is occurring.

06-10732 (Revised; Active)

That the Government of Saskatchewan amend in *The Child and Family Services Act* (or any legislation replacing this Act) the definition of "child in need of protection" in subsection 11(a) to protect children and youth from commercial sexual exploitation by:

1) Eliminating stereotypical and stigmatizing language such as "involvement in prostitution" and replacing it with language more accurately reflecting children and youth as victims of commercial sexual exploitation.
2) Revising the section to read, "if the child has been, or is likely to be physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child."
3) Adding definitions for "sexual abuse" and "sexual exploitation" within this section.

7.2 Duty to Report

Issue

Section 12 (Duty to report) of *The Child and Family Services Act* states that every person who has reasonable grounds to believe that a child is in need of protection shall report the information to an officer or peace officer notwithstanding any claim of confidentiality or professional privilege other than solicitor-client or Crown privilege.

The Children's Advocate Office has seen many examples of flawed reporting processes and non-reporting when a child is suspected to be in need of protection. In multiple cases, we have found authority personnel, including the RCMP, healthcare workers, teachers and principals, and staff in provincial facilities, not passing their own suspicions or reports from other staff or young people directly on to the Ministry of Social Services. Even within its own system, the Ministry of Social Services has had barriers between divisions and units.

The duty to report is a personal duty that cannot be delegated. It is a continuing duty, which means that even if one has already reported protection concerns about a particular child, if they then have subsequent concerns about that child, they must report those as well. The duty to report should also, once exercised, provide protection against reprisals.

Given the importance of the duty to report child protection, all child-serving systems and the public would benefit from raised awareness of *The Provincial Child Abuse Protocol* and the duty to report suspicions of child abuse in Saskatchewan. Furthermore, there is a need to revisit the good work done on information sharing and inter-ministry and agency collaboration that would benefit better reporting and investigation of suspected cases of child abuse.

Recommendations

10-16856 (New)

That the Government of Saskatchewan amend section 12 (Duty to report) of *The Child and Family Services Act* (or any legislation replacing this Act) to define the duty to report as a personal duty which cannot be delegated to another person.

10-16857 (New)

That the Government of Saskatchewan amend section 12 (Duty to report) of *The Child and Family Services Act* (or any legislation replacing this Act) to define the duty to report as a continuing duty that does not end with the making of a prior report.

10-16858 (New)

That the Government of Saskatchewan amend section 12 (Duty to report) of *The Child and Family Services Act* (or any legislation replacing this Act) to stipulate that the duty to report, once exercised, shall not result in reprisals of any kind.

10-16859 (New)

That the Government of Saskatchewan increase the allocation of ongoing financial and human resources to the Ministry of Social Services so as to carry out inter-governmental and public education on the *Provincial Child Abuse Protocol* and the duty to report child protection concerns.

7.3 Duty to Investigate

Issue

Section 13 (Duty to investigate) of *The Child and Family Services Act* states that where a report is made pursuant to subsection 12(1) or (4), an officer or peace officer shall investigate the information set out in the report if, in the opinion of the officer or peace officer, reasonable grounds exist to believe that a child is in need of protection.

The Ministry of Social Services has interpreted this section of the legislation in sound policy and practice when it comes to initial referrals of neglect and/or abuse to the Ministry. However, once a child is taken into care and placed in foster care or other residential resources, or their family is receiving services from the Ministry to support family preservation, many new reports of neglect or abuse are treated much differently.

For example, the Children's Advocate Office has found that when a child or youth is living in a foster home, new reports of neglect or abuse in that home are not necessarily treated with the same rigor as if they were new reports on a child not in care. Often, these reports go uninvestigated and instead are treated as "quality of care" concerns that may or may not be followed up by the foster home resource workers who may not possess the same specialist training that intake investigators have in examining potential neglect or abuse.

What also occurs when these new reports go uninvestigated or undocumented is that an intensive examination of the aggregate, variety or frequency of neglect and abuse reports may be overlooked, which in some cases leads to 10 and 20-year histories of

ongoing concerns in a foster home being minimized or marginalized without proper analysis and intervention to protect the children and youth living there.

Similarly, when a new report of neglect or abuse occurs in a family with previous child protection concerns and they are in receipt of family services from the Ministry of Social Services or delegated community-based agencies, the Family Services worker conducts the investigation. The Ministry has developed this policy and process to provide the least disruptive response to the family. However, once again, many Family Services workers may lack the specialist training to conduct such an investigation.

There is also an inherent conflict of interest between the role of an objective, trained investigator and the role of the resource worker, whose primary purpose is to develop and maintain residential resources to house children and youth brought into care, or the Family Services worker, whose primary purpose is to provide services and supports in an effort to preserve the family unit.

These roles are important components to providing a broad holistic response to children and youth who are in need of protection in this province. However, while it would be ideal that all Ministry of Social Services staff, no matter what their role is, could always act in the best interests of the child or youth brought into care, in reality the environment of the child protection system in Saskatchewan (i.e., one that is severely short on financial, human and residential resources) means that there may be excessive pressure put on front-line workers by Ministry supervisors and managers to keep all available residential resources open and preserve families of origin.

This is unfair to the front-line worker, creates conflict within different units within the Ministry of Social Services, and inevitably leaves children and youth at risk of additional harm while in care of the Ministry or in care of their families.

Recommendation

10-16860 (New)

That the Ministry of Social Services amend policy, programming and practice to ensure that all reports of neglect and abuse of children in Saskatchewan be administered and investigated by specialized intake investigation units regardless of where the child is residing or the nature of the services provided by the Ministry to the child or their family.

7.4 Alternative Dispute Resolution

Issue

Section 15 (Mediation services) of *The Child and Family Services Act* states that where an officer has concluded that a child is in need of protection, the officer may offer to the parent the opportunity to submit the officer's reasons for that conclusion to a mediator for the purpose of obtaining assistance in concluding an agreement with the parent for the provision of family services.

Mediation offered shall be carried out by a person who, in the opinion of the director, is qualified to provide mediation services and is representative of community parenting standards. Where the parent and the director do not enter into an

agreement for mediation and an officer believes that the child is in need of protection; the officer shall, as soon is practicable, apply to court for a protection hearing, which may be made by telephone in accordance with the regulations.

Section 15 provides the Ministry of Social Services with the ability to offer mediation services to families where a child has been found in need of protection. However, the Children's Advocate Office has observed that this option does not appear to be supported by institutional structures or offered equally in all regions of the province.

Alternative dispute resolution has been found to reduce the time consuming, adversarial, complex, costly and litigious aspects of the child protection system. It promotes cooperation, and results in cost savings and improved relationships between child protection workers and families. It has been found to increase compliance with protection plans and produce more meaningful involvement of parents, which can lead to an earlier resolution for their children.

Given the right circumstances, mechanisms such as mediation, family group conferencing, healing circles and Opikaniwasawin gatherings have shown success in resolving concerns and avoiding adversarial proceedings. However, as with all aspects of child protection legislation, policy, programming and practice in Saskatchewan, the child's best interests, safety and well-being must always remain the focus of this proposed program.

Recommendations

10-16861 (New)

That the Government of Saskatchewan amend section 15 (Mediation services) of *The Child and Family Services Act* (or any legislation replacing this Act) to expand the options available to officers and families involved in child protection proceedings to include other alternative dispute resolution mechanisms that the Ministry of Social Services can offer to resolve a child protection proceeding.

10-16862 (New)

That the Government of Saskatchewan, in collaboration with relevant stakeholders, develop, fund and implement an alternative dispute resolution program for child protection proceedings, with sufficient training and administrative oversight.

7.5 Child's Right to Participate

Issue

Section 29 (Child may be heard) of *The Child and Family Services Act* directs in subsection (1) that the court may, if it considers it to be in the best interests of a child who is the subject of a protection hearing, order that notice of the hearing be given to the child, permit the child to be present at the hearing or any part of it, or have the child brought before and interviewed by the court. However, subsection (2) of section 29 prohibits that child from being considered a party to the proceedings.

Saskatchewan's explicit exclusion of children and youth from their own child protection proceedings is unlike most other provincial legislation in Canada, and the Children's Advocate Office has advocated for legislative, policy, programming and practice changes in this area of child protection practice for many years.

A child's views should be incorporated into a decision that is ostensibly being made in his or her best interests, and if a child is not of sufficient age and maturity to convey to the court his/her views, someone should be looking out for those specific interests, as opposed to those of the state, the parents, or other individuals with standing.

It is our view that subsection 29(2) of *The Child and Family Services Act* contravenes section 7 (Life, liberty and security person) of the *Canadian Charter of Rights and Freedoms,* which states,

> "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

Subsection 29(2) would also, in our view, appear to contravene section 15 (Equality before and under law and equal protection and benefit of law) of the *Canadian Charter of Rights and Freedoms,* which states,

> "(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

If a Charter challenge were initiated on the matter of subsection 29(2) of *The Child and Family Services Act*, current authorities strongly suggest that the child's Charter rights have been violated and the offending section of the legislation would be struck down.

For example, current child protection legislation in Saskatchewan fails to stipulate any clear authority for independent child representation to be ordered by the court, or set out any criteria for a court to consider before deciding on the value of such independent representation for any given child. The current legislation further creates unequal treatment under section 15 of the Charter, because of the lack of uniform jurisdiction in all courts across the province to order such legal representation.

In January 2008, the Children's Advocate Office announced a new partnership with the Canadian Bar Association's (CBA) Saskatchewan Branch (now Pro Bono Law Saskatchewan) to make access to justice, through pro bono legal representation, available to Saskatchewan children and youth involved in child welfare proceedings. This pro bono program is viewed by the Children's Advocate Office and Pro Bono Law Saskatchewan as only an interim step until the Government of Saskatchewan amends current child welfare legislation to allow children and youth to access independent legal representation in court proceedings that directly affect them.

The program was set up due, in large part, to the advocacy cases that had come to our Office during the past several years, where children and youth stated that their voices were not duly considered within the court process in child welfare proceedings in Saskatchewan. In the first year, 2008, 41 referrals for independent legal representation were made, with the majority, 36, from Saskatoon. In 2009, 76 referrals for children and youth to access independent legal representation were made.

The need for a legislated framework that will support a formalized, structured, and funded counsel program for children and youth in Saskatchewan is evident. The current approach does not provide a long-term or sustainable solution. Although pro bono counsel are giving significant amounts of time to ensure that children and youth have access to legal representation, a pro bono program, by its inherent nature, will never be able to meet the existing demand for legal services.

Saskatchewan children and youth require a funded program grounded in immediate amendments to *The Child and Family Services Act* as current demand for this service outweighs the available pro bono resources. To date, there has been a deferral of consideration of the Office's proposed child representation amendments until the completion of the Child Welfare Review, with no indication that there will be any funding for a provincially supported program in the foreseeable future.

The situation, as it currently exists in Saskatchewan, runs counter to the proposition that the best interests of the child shall be a primary consideration in all actions concerning the child as outlined in Article 3 of the United Nations *Convention on the Rights of the Child*, as well as Article 12 in which the state is to provide a child capable of forming his or her own views, with the right to express them in any judicial or administrative proceeding affecting them, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Recommendations

06-10840 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to enable children to obtain full status as a party in child protection proceedings.

06-10841 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to authorize judges at all Court levels in Saskatchewan to appoint independent legal representation for children as a party in child protection proceedings.

06-10842 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include prescribed criteria by which a Court will determine whether a child requires independent legal representation in child protection proceedings.

06-10844 (Revised; Active)

That the Government of Saskatchewan, in collaboration with relevant stakeholders, develop, fund and implement a legal program, with sufficient training and administrative oversight, that would provide children with access to qualified independent legal representation in child protection proceedings.

7.6 Persons Having Sufficient Interest (PSI)

Issue

Section 23 (Persons of sufficient interest) 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 persons 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; or 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. Designation under section 23 does not confer custody of the child, but does entitle the person to notification of all child protection hearings pertaining to the child.

As noted in subsection 4.3.5 (Person Having a Sufficient Interest) of the Ministry of Social Services *Children's Services Policy and Procedures Manual,* only persons designated by the court shall be referred to by the term "person having a sufficient interest," which is recognized under two sections of *The Child and Family Services Act.*

Subsection 37(1)(b) (Orders re child in need of protection) states that if the court determines that a child is in need of protection, the court shall make an order that the child be placed, among several options, 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 Ministry. 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.

Two types of PSI placements are defined under the standards set out in subsection 4.3.5 (Person Having a Sufficient Interest) of the Ministry of Social Services *Children's Services Policy and Procedures Manual*:

- **Time limited PSI order:** The child is in the custody of the PSI caregiver and the intent is that the child will return to their parents. The Ministry remains involved to provide child protection services to the child, child's family and extended family (PSI). Case management services and contact standards conform to child protection standards (minimum of personal contact with the child and caregiver in the home once every 120 days or within the case planning period).

- **Indefinite PSI order:** The child is considered to be in the custody of the person having a sufficient interest indefinitely. The Ministry remains involved where the PSI caregiver requires ongoing financial support, special needs, or case management services to support the placement. Case management services and contact are offered on a voluntary or mutually agreed upon basis.

Over time, concerns have been raised with the Children's Advocate Office regarding the application of subsection 37(1)(b) respecting court orders placing children in the care of persons of sufficient interest. While the concept of making an order to place children with a person of sufficient interest who is prepared to care for a child is sound, in many cases there has been a negative impact on the child's legal rights, as well as a loss of entitlements that would have been available to the child under a different placement option under section 37.

Those other placement options include: returning the child to his or her parent; placing the child in the custody of the Minister for a temporary period not exceeding six months; or making an order of long-term or permanent committal to the care of the Minister.

An analysis of subsection 37(1)(b) demonstrates that when the court makes a PSI order, children lose entitlement to the rights and services that would otherwise be made available to them under temporary, long-term or permanent wardship. Foremost among these are the right to a permanent plan that contemplates their best

interests, as well as the interests of the caregivers. Specifically, it has been identified to the Children's Advocate Office that by obtaining a PSI order, the Ministry of Social Services is able to bypass the policy requirements that support permanency planning, which might lead to a child being registered and placed for adoption. The PSI order allows the Ministry to avoid planning for the adoption of a child, which may be in his/her best interests.

However, both children and their caregivers can feel other significant impacts when PSI orders are made instead of using other court ordered placement options. In one case referred to the Children's Advocate Office, the caregiver was a foster parent who had been caring for the child and agreed to take the child on as a PSI. Her level of financial support for the high needs child dropped by approximately $700.00 per month. The child also lost or was limited in their ability to access funding to address his special needs. The agreement to be a PSI led to severe financial difficulties for the foster parent and a restriction on access to services and supports for the child.

Other calls to the Children's Advocate Office regarding individuals agreeing to become persons of sufficient interest have identified that the disclosure of information that has been provided to them by Ministry of Social Services workers about the implications of entering into a PSI has not been complete or accurate. The result has been entering into an agreement to care for the child, which results in a PSI order being made, and the reality that the outcome of custody was not what they had expected. In one case, a judge attached access requirements for the child's biological parent that had not been part of the original planning. The PSI family had to hire their own lawyer to try and have the order amended or overturned.

Of particular concern to our Office is that under an indefinite PSI order, the caregiver does not have legal custody of the child as defined in the interpretation section of *The Children's Law Act,* where it is defined as "meaning personal guardianship of a child and includes care, upbringing and any other incident of custody having regard to the child's age and maturity." Further, the *Divorce Act* in its interpretation section defines custody as "care, custody and any other incident of custody." Currently, there is no definition of what "custody" means in *The Child and Family Services Act*.

That appears why in subsection 8.3 (Court Information Related to *The Child and Family Services Act*) of the Ministry of Social Services *Family Services Policy and Procedures Manual* states, "Where an order to a person of sufficient interest is made and it appears to be a long-term order [i.e., an indefinite PSI order], the caseworker should recommend to the person of sufficient interest that he or she applies for custody of the child."

This ambiguity in legal status leads to there being no rights and responsibilities enumerated that would provide direction as to custody of a child in instances where: a PSI placement deteriorates and the child must be removed; the PSI parents separate or become deceased; or in regard to the child's rights to inheritance respecting a PSI family's estate should the deceased die intestate.

All of these issues can have significant impacts on children and youth; yet in the course of a judge deciding to make an order designating a person as a PSI, there is no one who is present to represent the interests of children. Often, other parties to the proceeding overshadow a child's interests and their particular needs will not be promoted. In that regard, and particularly when dealing with PSI orders, at a minimum, it is important that their interests are raised to the level of all the parties through their own independent legal representation as recommended in subsection 7.5 of this submission.

The lack of permanency planning, encroachment on a child's entitlements after leaving care, and confusion that the designation creates for individuals or families who agree to become a PSI caregiver, all create serious concerns about the best interests and well-being of a child who are affected by these decisions. The Children's Advocate Office believes that a child is entitled to a more permanent order with all the rights and entitlements that flow from it—orders that are already available under section 37: (1) being made a temporary ward; (2) being made a permanent ward; or (3) being made a long-term ward.

Recommendation

10-16863 (New)

That the Government of Saskatchewan amend section 37(1) (Orders re child in need of protection) of *The Child and Family Services Act* (or any legislation replacing this Act) to eliminate the option for a child in need of protection to be placed in the custody of a person having a sufficient interest in the child.

7.7 Withdrawal

Issue

Section 25 (Withdrawal) of *The Child and Family Services Act* states that an officer may withdraw an application for a protection hearing at any time if: an agreement for the provision of family services is reached with the parent; the officer is of the view that the child is no longer in need of protection; or the court consents.

Unilateral withdrawal of an application for a protection hearing by an officer under section 25 has the potential of inflicting unwanted harm to children and ultimately their families. A case may be withdrawn without the benefit of ensuring that proper oversight of the new case plan has taken place. Counsel for the parties should be provided the opportunity to make submissions and either support or challenge the purported plan to ensure the best interests, safety and well-being of the child have been properly considered and incorporated.

Recommendation

10-16864 (New)

That the Government of Saskatchewan amend section 25 (Withdrawal) of *The Child and Family Services Act* (or any legislation replacing this Act) to prohibit officers defined under the Act from unilaterally withdrawing applications for a protection hearing without the approval of the court.

7.8 Publication Bans and Private Hearings

Issue

Section 26 (Order prohibiting publication) of *The Child and Family Services Act* states that a protection hearing or any part of a protection hearing may, in the discretion of the court, be held in camera. The court may make an order prohibiting the publication of a report of a protection hearing or any part of a protection hearing, if the court believes that the publication of the report would not be in the best interests of any

child directly or indirectly involved in the hearing; or would be likely to identify, have an adverse effect on, or cause hardship to, the child who is the subject of the hearing, or any other child.

In Canada, there is a mixed response to the issue of private hearings and publication bans respecting child welfare proceedings. The differences reflect the various efforts of provincial governments to balance the principle of openness and transparency of information to the public on the one hand, with the principle of privacy and limiting the potential for harm and stigmatization that could result to children, on the other.

The Children's Advocate Office has observed in Saskatoon that child protection hearings in the Court of Queen's Bench are open to the public, with family names listed on the docket posted at the door. Our consultation with legal counsel involved in these proceedings suggests that it is very difficult to get an order for an in-camera session in this court. The courtroom is often filled with family members and the general public is allowed to sit in open seating through all proceedings. There is a lack of confidentiality for children and youth at potentially the most vulnerable moment in his or her life.

The Children's Advocate Office holds the view that open public attendance at child welfare court proceedings and the permissive publication of identifying information concerning the child ought to be subject to stronger limits. Having said this, our position is different with respect to public access to non-injurious and non-identifying information that is in the public interest. In this regard, the Children's Advocate has been quoted as saying that:

> "Child welfare shouldn't operate in the shadows. It's important to shine the light on these situations to learn the lessons, but to do so while respecting confidentiality and privacy to protect a child's well-being."[19]

Recommendations

10-16865 (New)

That the Government of Saskatchewan amend section 26 (Order prohibiting publication) of *The Child and Family Services Act* (or any legislation replacing this Act) to make all child protection proceedings under the Act private with no persons present other than the child; the parties; and those ordered by the court, including a specified number of media representatives.

10-16866 (New)

That the Government of Saskatchewan amend section 26 (Order prohibiting publication) of *The Child and Family Services Act* (or any legislation replacing this Act) to provide that a ban on publication of identifying information with respect to the child, the family members and the foster parents or other caregivers shall be automatic, unless the court explicitly decides otherwise based upon a consideration of the child's best interests.

[19] Saskatoon, The StarPhoenix, *More information would improve child welfare system* (28 June 2010).

7.9 Time Limits

Issue

In 2000, the Children and Youth in Care Review cited the issue of child protection cases staying in "litigation limbo" when,

> "…the court machinery fails to be sensitive to the child's time frame, either by allowing too much time to elapse before a decision is reached and/or by allowing legal proceedings to be so prolonged that the child is kept in limbo during that critical period in which a child must either develop a secure emotional attachment or be left with lifelong emotional and social effects."[20]

At that time, the Children's Advocate Office recommended that the time limits outlined in *The Child and Family Services Act* be amended to ensure that both the time taken in having a case dealt within the courts and the length of time a child can be in care without a permanent resolution are meaningful and can be adhered to.

The experience in Saskatchewan, which is supported by research completed in other jurisdictions, identifies that limits need to be enshrined in legislation in order to ensure that delay does not become the norm, and children are not exposed to unnecessary harm. The significance of delay is that it is psychologically troubling and unsettling for children (and their families) who, if they are capable of understanding what is happening, are waiting for and deserve to have a fair, inclusive and firm decision made about their lives in a timely fashion. The danger of limbo is exacerbated by the age of the child.

Research into other provincial statutes revealed that nine provinces have prescriptive time frames for temporary and total time spent in care without a resolution to the case. Saskatchewan has instilled some legislated time provisions into *The Child and Family Services Act*; however, the current legislative provisions can expose children to the possibility of having their case go well beyond two years while the matter is winding its way through the court process.

Recommendations

09-14150 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to reduce 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.

10-16867 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to ensure that where an application is made under subsection 17(1)(b) for a protection hearing, or a matter is brought before the court to determine if a child is in need of protection and the process has not resulted in a determination after a period of three months, that the court set a date for a hearing of the application at the earliest reasonable date, and the court shall give direction and make

[20] *Supra* note 5 at 92 (Children in Limbo Task Force of the Sparrow Lake Alliance, 1996).

such orders that are compatible with the fair resolution of the matter, giving paramount consideration to the best interests of the child.

7.10 Services for Children with Disabilities

Issues

The Children's Advocate Office believes that, based on a review of similar issues in other jurisdictions and information from referral sources and key stakeholders in the community, parents of children with emotional, behavioural, intellectual or physical disabilities are at times relinquishing custody of their children to the Ministry of Social Services under the auspices of *The Child and Family Services Act* in order to access what few services, supports and respite are available in the province.

In most of these cases, the child is not in need of protection under definitions of the Act and the parents would like to continue as the primary caregivers and/or decision-makers for their children's care. Instead, the parents voluntarily commit their children to care, and then they and their children are forced to assume the stigma of becoming involved in the child protection system in order to access the supports and services they require to maintain the health and well-being of the family and children.

Article 23 (Rights of children with disabilities) of the United Nations *Convention on the Rights of the Child* indicates that in ratifying the Convention, as Canada has done, the state party recognizes that a mentally or physically disabled child would enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

States parties also recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

This assistance shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 9 (Separation from parents) of the United Nations *Convention on the Rights of the Child* indicates, the state party shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

It would be hard to find any citizen of Saskatchewan who would argue that children should not be protected from situations where their parents or caregivers have placed them at risk. However, the scenario is significantly different when it is not the actions of the child's caregivers that place the child at risk, but rather the state has failed to meet the needs of families with children who have emotional, behavioural, intellectual or physical disabilities that result in children being exposed to risk and families falling under undue stressors.

Compounding the issue of having to voluntarily relinquish custody in order to access supports and services, is that there are so few programs, services and facilities to which these families can turn, if they cannot care for their children.

In particular, there are few residential options in Saskatchewan for children and youth who require intensive mental health treatment in a secure setting that limits their ability to run away. Typically, many of these children and youth are either housed in adult mental health units or their behavior is treated as criminal and they crossover into the young offender system where even fewer treatment options exist.

As stated by a Ministry of Social Services' critical injury review team on one specific case example:

> "The absence of appropriate resources in the province for a 16-year-old with mental health issues and no criminal record is the crux of the dilemma faced by case planners in this situation. There is a gap in services which appears to cross various government ministries that leaves some youth such as DM without appropriate options."[21]

Subsection 5.36 (Services for emotionally disturbed and developmentally disabled children) of the CWLA Standards for Organization and Administration states that,

> "For children with severe disturbances in development and functioning, a range of treatment services and facilities under social agency and medical auspices, public and voluntary, should be available in the community so that services and facilities will be used appropriately for children who cannot be cared for and treated effectively in their own homes and families. These services should include mental health centers, other outpatient psychiatric services, specialized foster family and group homes, inpatient psychiatric services, and specialized education and health programs."[22]

The Government of Saskatchewan has the capacity to legislate and implement policy and programming decisions to make services available for disabled children and their families to avoid having to bring them into care. Legislators, parents, stakeholders, advocates and professionals must work together to ensure that the required services are being provided in a way that does not offend the disabled child or their family's dignity, meets the test of fundamental justice, and achieves Saskatchewan's obligations under the United Nations *Convention on the Rights of the Child*.

Recommendation

10-16868 (New)

That the Government of Saskatchewan develop legislation, policy, programming and practices to deliver services for disabled children, youth and their families that would prevent having to commit children and youth into the care of the Ministry of Social Services.

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21 Saskatchewan, Ministry of Social Services, *Child Critical Injury Review Report DM* (2008).

22 Child Welfare League of America Standards, *Standards for Organization and Administration* (1999) at 96.

8 Living in Care

8.1 Rights of Children Living in Care

Issue

In the Children's Advocate Office's experience, the rights of children and youth guaranteed under the United Nations *Convention on the Rights of the Child* and the *Canadian Charter of Rights and Freedoms* do not receive adequate respect and consideration in current child protection legislation, policy, programming and practice in Saskatchewan. Denial of such rights manifests itself in various areas, including health care, education, living arrangements and case planning. It is necessary to realize and respect the rights of children and youth in all aspects of service delivery.

The legislation upon which the entire child protection system is based sets the foundation for the experience and quality of life for each child or youth in care. Therefore, the legislation must explicitly provide each child and caregiver with rights and entitlements that guide how the system will make living in care a positive experience and provide each child with a good quality of life.

In subsection 3.3 (Rights of Children) in this submission, the Children's Advocate Office recommends that a provision be added to *The Child and Family Services Act* that explicitly recognizes the rights of children in the form of incorporating the Saskatchewan *Children and Youth First* Principles. In addition to these global principles regarding all children's rights, there also needs to be entrenched in the same legislation, the specific rights of children living in care.

Recommendation

06-10728(c) (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a list of rights based on the United Nations *Convention on the Rights of the Child* and the Saskatchewan *Children and Youth First* Principles, to which a child is entitled when living in the care of the Ministry of Social Services, including, among other considerations the right to:

a. Be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in care;
b. Be informed about their plans of care;
c. Be consulted and to express their views, according to their abilities, about significant decisions that affect them;
d. Reasonable privacy and to possession of their personal belongings;
e. Be free from corporal punishment;
f. Be informed of the standard of behaviour expected by their caregivers and of the consequences of not meeting their caregivers' expectations;
g. Receive and, if deemed a mature minor, consent to or refuse medical and dental care;
h. Receive an education that corresponds to the child's aptitudes and abilities, in a community setting wherever possible;

i. Participate in appropriate social and recreational activities according to their abilities and interests;
j. Receive religious instruction and to participate in religious activities of their choice;
k. Receive encouragement and guidance to maintain their cultural heritage; and
l. Privacy during discussions with members of their family, lawyers, or a person employed by the Children's Advocate Office under *The Ombudsman and Children's Advocate Act*, an Ombudsperson, a member of the Legislative Assembly or a member of Parliament.

8.2 Child's Right to Participate

Issue

In 2000, the Children's Advocate Office's Children and Youth in Care Review identified that:

> "All youth participants reported feeling that the whole Family Services system operates without enough attention to what children and youth think or feel and without listening to their concerns. Children and youth want to be consulted more often in initial apprehensions, in decisions about their placement, and have a say in their ongoing case plan."[23]

The Review's report highlighted that youth, along with their parents and siblings, are the ones most affected by child welfare law and policies. They cannot help but gain an intimate knowledge of the system when they struggle to navigate it on a daily basis. Children and youth in numerous jurisdictions have demanded the right to participate in decisions that affect them.

Since the Office's inception, we have routinely received complaints from children and youth, their caregivers and other stakeholders expressing concern that children and youth are not being included in case planning, nor afforded the opportunity to express their views on matters affecting them. Consequently, for the past 15 years, we have recommended for government to provide children and youth with the right to participate in case planning and have a voice in all matters affecting them.

It is not an accident that the second of the Saskatchewan *Children and Youth First* Principles, after the entitlement of those rights defined by the United Nations *Convention on the Rights of the Child*, is the right for children and youth to participate and be heard before any decision affecting them is made. These Principles were crafted with the input of young people living in care, and by far, their most frequent complaint was that they are not consulted and listened to in case planning.

Article 12 (Respect for the views of the child) of the United Nations *Convention on the Rights of the Child* indicates that states parties shall assure to the child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative

[23] *Supra* note 5 at 20.

proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Youth contacting our Office advise they are unaware of very specific issues such as their legal status with the Ministry of Social Services, how long they may be in care, what the plan for their living arrangements are, when they will visit their families and other plans for their future. Many times, Ministry staff members do not provide children or youth with case plans in a timely manner, nor are they regularly reinforcing or communicating the plan to the child or youth.

Complementary to the right to participate is a child or youth's right to information about his or her entitlements under *The Child and Family Services Act* that will assist them in effectively participating in their case planning and child protection cases. They also should have the right to information about the services of the Children's Advocate Office to assist them in having their voice heard.

Article 5 (Parental guidance and the child's evolving capacities) of the United Nations *Convention on the Rights of the Child* provides guidance on how persons legally responsible for the child should provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their rights.

That is to say, that when a child comes into care, depending on their capacity to comprehend and advocate for themselves, the staff and delegated care providers of the Ministry of Social Services have a duty under the Convention, as acting parent for that child, to inform them of their legal rights and assist them in exercising those rights. If the child has not evolved to the capacity to do this for themselves, then other natural and mandated advocates, including staff and delegated representatives of the Ministry of Social Services, have a duty to ensure their rights are recognized and respected.

Recommendations

09-14145 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision requiring the Ministry of Social Services and its delegated service providers to inform any child upon admission to care of his or her entitlements under the Act.

09-14146 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to include a provision requiring the Ministry of Social Services and its delegated 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 privately meet with representatives of the Office.

8.3 Case Management

Issue

The majority of calls received from children and youth by the Children's Advocate Office are regarding case management issues. More specifically, children and youth

in care express concerns about the absence of a case plan, that they do not know what the plan is, what decisions are being or have been made about them, or what they can expect in the future. This is very disconcerting to young people, who as victims of neglect, abuse and/or abandonment, have lacked stability and structure necessary for their health and well-being.

Also of significance to our Office, is the difficultly in getting provincial government ministries and agencies to work together to provide integrated case management for children and youth in care of the Ministry of Social Services. As indicated in subsection 5.1 of this submission, Ministry staff find themselves having to convince other child-serving ministries, such as Health or Education, to contribute to the care and well-being of a child or youth in care.

Much good work was done over the past decade on developing tools and processes for the delivery of integrated services to children and youth. Unfortunately, implementation and adoption of both the principle of integrated case management and tools has been very slow and continues to be a challenge for the Ministry of Social Services as it grapples with the growing complexity and variety of the needs of children and youth coming in care.

The absence of any case plan, let alone an integrated case plan, is reflective of a bigger issue of youth participation in case planning and having a voice in any matter affecting them. Often times, it is not so much a matter of an absence of a case plan, but rather, the youth has not been made aware of a case plan. Therefore, as referred to in subsections 7.5 and 8.2 (Child's Right to Participate) of this submission, participation rights should be entrenched in legislation.

Currently, *The Child and Family Services Act* contains neither legislative requirements related to case planning for children and youth, nor any requirements for the inclusion or participation of children and youth in case planning. The one exception to this is in subsection 9(6) of *The Child and Family Services Act*, which states that if the child is 12 years of age, an officer shall explain the agreement to the child and, where practicable, take the views of the child into account. This is only applicable to children and youth in care under section 9 agreements and does not speak to their participation with respect to any other type of order under the Act.

The Ministry of Social Services *Children's Services Policy and Procedures Manual* does not provide adequate recognition of children and youth's participation rights. Subsection 2.5.1 (Assessment and Case Plan Forms) makes a brief reference to including the child, indicating that case conferences should be held regularly to share information, review progress and make plans with the child, family and others involved in the case.

One key component to case planning is exploring, within limited time periods and once it is clear the child will not be returning to their family of origin, opportunities for a child or youth in care to have a more long-term, secure and stable plan and living arrangement. In 2000, the Children and Youth in Care Review discussed the issue of time in care and long-term wards languishing in care:

> "Increased numbers of children in long-term care, and the lack of long-term permanency planning for these children is alarming. The agreement between the DSS and First Nations [moratorium] on the adoption of Aboriginal children is seen by some as creating more long-term wards who are overloading the system that is really designed for short-term placement. These long-term wards are seen as being

> 'sentenced to ambiguity' without a case plan, and 'warehoused' in care, until they are old enough to leave on their own."[24]

More recently, we discussed the concept of permanency planning for children and youth in care in *A Breach of Trust*:

> "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' 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."[25]

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, custom adoption, and open adoption in many jurisdictions. This more expansive permanency continuum needs to be further explored in this province. The current narrowness and rigidity of the legislated options in Saskatchewan 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. Also, as recommended in subsection 7.9 (Time Limits) of this submission, 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.

Recommendation

09-14151 (Revised; Active)

That the Government of Saskatchewan 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.

8.4 Placement Planning and Preparation

Issue

Children and youth coming into the care of the Ministry of Social Services are entitled to placement planning and preparation. This is required to make the transition into care and any moves while in care as minimally traumatizing as possible.

Ideally, this involves the child's caseworker spending time to properly prepare for and discuss the move with the child and their family. In the event of emergency apprehension, this is often not possible given the crisis at the time. However, when moving a child between residential resources and caregivers, the Ministry has developed sound policy regarding planned moves for children and youth in care. The Ministry of Social Services has also developed policy, practice guidelines and

[24] *Supra* note 5 at 40.
[25] *Supra* note 6 at 57.

procedures to conduct placement matching between the child and an appropriate resource to meet their unique needs.

Unfortunately, many children and youth living in the care of the Ministry of Social Services are not receiving the benefits of placement planning and preparation due to the overloaded caseloads of and workload pressures felt by Ministry front-line workers. Compounding this issue is the established fact that there is a severe shortage of residential resources (i.e., foster care, group homes, specialized mental health treatment facilities, etc.) to which caseworkers can match a child's needs.

The Children's Advocate Office has a long list of advocacy and investigation cases where inappropriate or no placement matching has occurred due to these caseload pressures and resource shortages. Frequently, moves of children and youth already in care occur at the same frantic pace as emergency cases, which leads to mismatching, multiple moves, and/or children and youth running from their placements.

Many times children and youth are moved so quickly and without the requisite planning that: new caregivers are given little or no information about them or their education, health and special needs; appointments for visits with family get missed; and personal possessions, caregivers, siblings and friends get left behind without any recompense, explanation or goodbyes.

One of the most telling cases that came to our attention recently was when a five-year old child was placed in a mixed-gender adolescent group home approximately four hours away from her family and community. In no way did this placement meet the child's best interests, safety or well-being, but there was no alternative available.

Some residential resources (i.e., group homes) do better at arranging pre-placement visits and preparing the child for transition to the next resource. However, as explained throughout this submission, the entire child protection system in Saskatchewan requires an assessment and investment of additional human, financial and capital resources that goes beyond any commitment made by the current or any previous provincial government.

Recommendations

09-14147 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to create a Residential Placement Review Panel, to which a child or other persons, who have demonstrated an informed concern for a child's best interests, safety and well-being, may make application for the review of a Ministry's placement decision.

09-14148 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to stipulate that a child placed in 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.

09-14149 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to stipulate 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.

8.5 Contact Standards

Issue

As part of his or her case management, children and youth living in the care of the Ministry of Social Services are entitled to regular and consistent contact with their Ministry appointed caseworkers. In order to assist families in identifying and resolving issues that have brought their children into care, and in order to guide and support the child or youth during their time in care, regular and consistent contact with their Family Services worker is an absolute necessity.

Proper assessments of both child and family require frequent and ongoing contact as does facilitating and providing the necessary family support services. Families rely heavily on their caseworkers to facilitate the recovery and reunification of the family unit. Possessing such a tremendous amount of responsibility and authority must be recognized and appreciated as an opportunity and honor to significantly impact the lives of many people including generations to come, and Ministry of Social Services staff should not underestimate the relevance and importance of such a critical role in our society.

Unfortunately, many children and youth living in the care of the Ministry of Social Services are not receiving regular contact with their caseworkers as they are entitled to under current policy and procedures. Children and youth do not receive regular visits or phone calls from their workers, and as one youth so eloquently put it, “we are left and forgotten.”

Frequently, the Children’s Advocate Office is told by referral sources, including biological and foster parents, that Ministry of Social Services staff members do not visit the children on their caseload on a regular basis, and we have often been advised that both caregiver and child have no knowledge of who their worker is. This is disturbing, given the dependence on the worker for the care and connection of the child to their family of origin.

Some of the most distressing cases brought to our Office’s attention relate to children and youth who have been placed in residential group homes. There appears to be a culture of apathy and disconnect that has developed with respect to these particular living arrangements. It is our impression that workers often feel a false sense of security in such placements, because of the presence of group home staff. As a result, they feel less obligated to maintain regular contact as they would in a typical foster care or alternate care placement.

Children and youth in such resources regularly report that, once placed in a staffed residential resource, they do not hear from their worker again until they have moved out. This issue has consistently been confirmed by staff in the residential resources, who struggle to engage caseworkers to maintain contact with the child or youth and participate in their case plan. Group home staff and caseworkers have distinct roles in the child protection system and one’s presence should not mitigate the need for the other’s presence in the child or youth’s life. In fact, they should be working in concert as checks and balances in the system to ensure the best interests, safety and well-being of the child is always at the centre of service delivery.

The ramifications of inadequate contact with child and family caseworkers have a significant and lasting impact on the youth and families involved. Case plans are not conveyed, family visits are missed and important events fall by the wayside. Children and youth often feel abandoned by their worker; not knowing what to expect in the present or the future. Such uncertainty is devastating to children and youth who so desperately need stability, consistency and security in order to thrive and mend the wounds of abuse and neglect.

Neither *The Child and Family Services Act* nor its regulations refer to contact standards for children in care. Although Ministry of Social Services' policy and procedures provide clear guidelines related to maintaining regular contact with children in care, the issue clearly becomes a question of policy compliance on the part of Ministry staff. Addressing these serious breaches requires incorporating them into legislation and/or regulations in order to ensure a higher level of compliance.

As explained in section 5 (Direct Service Delivery) of this submission, the Ministry of Social Services has a fiduciary duty to ensure that the rights and entitlements of children in care are strictly observed; that adherence to existing policy and procedures is of the utmost importance; and that impediments to such adherence are immediately identified and rectified. Not meeting contact standards for children and youth living in care is but one of many instances of non-compliance with policy that directly impacts the lives of children and youth due to chronic under resourcing of the child protection system by successive governments in Saskatchewan.

10-16870 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) or its regulations to include a provision entrenching specific contact standards to be met by Ministry of Social Services staff for children and youth living in care, in alternate resources, or in the family home under the Ministry's supervision.

8.6 Foster Care

Issue

In February 2009, the Children's Advocate Office tabled the special report, *A Breach of Trust: An Investigation into Foster Home Overcrowding in the Saskatoon Service Centre*, in the Saskatchewan Legislative Assembly. This report confirmed issues found in the foster care and broader child welfare system that dated back well over two decades in the province and had been previously identified and publicized by the Provincial Ombudsman, Children's Advocate and Provincial Auditor. These included, among other issues:

- Current foster home resources do not meet the specialized needs or numbers of children coming into the care of the Minister of Social Services.
- 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 of Social Services 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 of Social Services caseworkers, not enough caseworkers, and not enough contact between caseworkers, foster parents and children in care.

The report identified that it was important to realize that children living in care of the Ministry of Social Services often come from family homes where they have been subject to serious family dysfunction and severe forms of maltreatment. Too often, they have histories of abuse and neglect, along with the resulting long-term physical, sexual, psychological and emotional injuries. These factors 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.[26]

Furthermore, once children come into care, they are at higher risk to become 'crossover kids,' who move from placements in the child protection system 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 the child welfare system, poor academic achievements and increased probability of involvement in the youth justice system.[27]

Alternatively, there are many parents who conscientiously, responsibly and voluntarily relinquish their children into provincial 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.

The core of the findings and recommendations that have been made in past, when coupled with research that was conducted both nationally and internationally, led to the conclusion by our Office that placing standards of care into policy rather than in

[26] 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.

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

legislation or regulations—as it currently is in Saskatchewan—has significant implications for the rate of compliance with those policies and for children and youth in care who are placed in foster homes. Currently, the Ministry of Social Services and its delegated agencies are not compelled to follow policy, as there is no legal force behind it. Placing standards into legislation and regulation would compel the Ministry or its delegated agents to follow the directive or be held accountable for the transgression.

As a result, the Children's Advocate Office made several recommendations in *A Breach of Trust* that required amendment to *The Child and Family Services Act.* The Ministry of Social Services has deferred action on those amendments until such time as the Child Welfare Review has been completed. Therefore, we include them in this submission for the Panel's consideration as well.

Recommendations

09-14144 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) or its regulations to 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.

09-14151 (Revised; Active)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) to create 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.

8.7 Group Homes

Please see subsection 6.3 (Licensing and Accreditation of Residential Resources) in this submission.

9 Transitioning into Adulthood

9.1 Practical and Emotional Support

Issue

Over a decade ago, the Children's Advocate Office's *Children and Youth in Care Review: LISTEN to Their Voices Final Report* identified that,

> "…there is a lack of practical and emotional support to older youth who have been in long-term care. Foster parents and social workers are particularly aware of the difficulties youth experience when they go abruptly from being in care one day, to being on their own the next day as they turn 16, 18 or 21, depending on the terms of their care agreement. There is a consensus that youth need to achieve gradual, well-planned independence with financial and life skills support."[28]

In 2007, the National Youth In Care Network completed a significant and compelling education research brief, *Enhancing Academic Success of Youth in Care*,[29] which specifically addresses the struggles faced by youth aging out of the child welfare system and ways in which to enhance the academic success of youth in care. The report clearly identifies the need for consistent, supportive relationships, mentoring on independent living, and support in accessing further education, employment and training.

Today, the two areas of support for youth in care as they transition into adulthood in Saskatchewan are not integrated, and do not provide the level of resources or continuum of programming required for these young people to complete their education and/or achieve the life skills required to become confident and self-reliant citizens.

Section 10 (Agreements re child over 16) of *The Child and Family Services Act* permits the Ministry of Social Services to provide care and supervision of a person who is 16 or 17 years old if there is no parent willing to assume responsibility or the person cannot be re-established with his or her family. This enables the Ministry to provide residential services and financial assistance to 16 and 17 year-old youth who request services and are willing to accept care, supervision and direction by the Ministry, including participation in an approved educational or treatment plan.

Section 56 (Extension of support) of *The Child and Family Services Act* states that the Minister may enter into an agreement to provide financial assistance and support services to former wards who have attained the age of 18, but not beyond the age of 21 years and who are: continuing their education; require assistance or training to enable them to continue their education or obtain employment; or because of a mental or physical disability or impairment, require care or participation in a program to assist them in their mental or physical development or in the acquisition of life skills.

The Government of Saskatchewan must recognize that these are still vulnerable young adults who have unique needs and risk factors associated with being in care of the Ministry of Social Services. Transition planning and service delivery has to

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28 *Supra* note 5 at 56.

29 Canada, National Youth in Care Network, *Enhancing Academic Success of Youth in Care A Research Brief* (2007).

accommodate the potential for disruptions that most young adults face, as they engage in post-secondary education or early employment, but also the additional aspects of being former youth in care.

It is clear that there is a severe need for more resources and attention to be paid to properly preparing youth in care for independence. The shock of being turned out into the streets at truly inappropriate times (i.e., days before a birthday or high school graduation), with no information or supports available to the youth, is an event we witness all too often at the Children's Advocate Office.

Under section 56 (Extension of support) of *The Child and Family Services Act*, former wards of the Ministry of Social Services, who have reached the age of 18 years, are limited to three years of financial assistance and support services from the Ministry to pursue education and training as young adults. This can be a significant issue for young adults who are participating in a four-year degree program or have experienced a disruption in their education while in care or after reaching the age of 18.

The Children's Advocate Office has intervened in many situations where young adults have been denied or cut off from support at inappropriate junctures in their lives, and due to the very prescriptive time limit in the legislation, advocating for extensions to the agreement is unlikely to be granted and we are unable to affect very little, if any, positive change.

Recommendations

10-16871 (New)

That the Government of Saskatchewan integrate section 10 (Agreements re child over 16) and section 56 (Extension of support) of *The Child and Family Services Act* (or any legislation replacing this Act) so that youth in care receive the level of resources and continuum of programming required as they transition into adulthood.

10-16872 (New)

That the Government of Saskatchewan amend section 56 (Extension of support) of *The Child and Family Services Act* (or any legislation replacing this Act) to state that the maximum age of support be extended to the young adult's 25th birthday.

10-16873 (New)

That the Ministry of Social Services create and adequately resource a specific program to prepare current and former youth in care for independence as adults through the provision of life skills training, and appropriate financial, mentoring and peer supports from age 16 until they reach their 18th birthday, or until they reach their 25th birthday if they have entered into a section 56 agreement with the Ministry.

9.2 Access to Information

Issue

The rate of long-term and permanent wards exercising their entitlement to section 56 agreements is alarmingly low considering the number of permanent and long-term wards in Saskatchewan and the potential benefits. Access to free post secondary education and living expenses would normally be a highly advantageous and well

utilized benefit for most. However, for youth in care, it is a significantly under-utilized entitlement that warrants closer examination of the deterrents that prevent youth from participating.

Ministry of Social Services policy states that all wards that approach their 18th birthday should be informed, in writing, of the extended care provisions.[30] Although procedures stipulate notification is to occur, some youth do not receive such notification and are unaware of this entitlement. Subsequently, youth may miss out on the opportunity to receive ongoing support, while they continue with their education plan and transition into adulthood.

Appropriate notification of youth regarding their entitlement to a section 56 agreement has been an issue raised with the Children's Advocate Office primarily by caregivers of the youth. Callers have been somewhat aware that there is support available to the youth, but the Ministry of Social Services has not adequately informed them regarding the exact nature of the section 56 agreement or the entitlements available under the agreement. On occasion, we have also heard from youth who have found out about extension of support entitlements, only to learn that they are about to, or have since aged out of the system, and it is too late to pursue or benefit from this service.

Transitioning programming to youth in care aged 16 or older should provide frequent and consistent opportunities to inform them of their service entitlements under section 56 agreements.

Recommendation

10-16874 (New)

That the Ministry of Social Services amend Chapter 3.9 Procedures of the Ministry of Social Services, *Children's Services Policy and Procedures Manual* to state that all wards who have reached 16 years of age or older, shall be informed, in writing and in meetings with Ministry representatives, of their extension of support entitlements.

9.3 Financial, Mentoring and Peer Support

Issue

Young adults participating in section 56 agreements receive limited funding for basic necessities such as food, clothing, shelter and personal allowance. Although funding is available during the school year, youth are expected to contribute to their clothing, personal and spending needs, to the best of their ability during school holidays or breaks. This poses an undue hardship on some young adults as they are immediately cut-off from funding whether they have a job or not, and many times they run into problems with balancing end of school-year rent and bill payments while waiting for a new job or income assistance payments.

The amount of ongoing support provided by the Ministry of Social Services is at the discretion of the Regional Director, and from the Children's Advocate Office's experience, the current level of financial support provided by the Ministry appears to inhibit a young adult's transition to independence rather than promote it by providing equal entitlement to funding.

[30] Saskatchewan, Ministry of Social Services, *Children's Services Policy and Procedures Manual* (April 2010) at s.3.9.

Current financial policies discriminate against former long-term or permanent wards of the province in that they do not receive the same level of rental allowance as recipients of income assistance. Too often, the stress imposed by unfair or varying financial supports leads young adults who are in section 56 agreements to become frustrated, lose focus on their current education plan, and in some cases become reliant on other government programs that provide financial assistance.

Ministry of Social Services policy states that former wards that are receiving services through section 56 (Extension of support) require a minimum face-to-face contact yearly or at the time of the annual review.[31] Such limited contact does not provide the young adult with adequate adult mentoring and support services needed to successfully transition out-of-care.

The Children's Advocate Office has often heard from youth aging out of the foster care system that they feel as though they've been kicked to the curb on their 18th birthday, with little or no adult support as they make such a major life transition. They feel completely unprepared and lack the basic independent living skills necessary to navigate their way into adulthood.

Former youth who have been in care of the Ministry of Social Services invariably also express a desire for more peer supports to help them understand their circumstances in care and help adapt to a life out-of-care when they turn 18 or continue their education under a section 56 agreement. The Saskatchewan Youth in Care and Custody Network (SYICCN) is a valuable resource, of which current and former youth in care often have no awareness. The Ministry of Social Services should consult with SYICCN more often and support the services provided by SYICCN as part of a holistic response to youth in care who are aging out of the child protection system.

Recommendations

10-16875 (New)

That the Ministry of Social Services amend Chapter 6.6 Basic Rates for Specialized Out of Home Care, Independent Living of the Ministry of Social Services, *Children's Services Policy and Procedures Manual* to reflect an increase in all amounts of support available to youth in section 56 agreements.

10-16876 (New)

That the Ministry of Social Services, as part of the creation and adequate resourcing of a specific program to prepare current and former youth in care for independence as adults, provide:

1) adult mentoring that includes more frequent contact from age 18 until they reach their 25th birthday, if they have entered into a section 56 agreement with the Ministry; and
2) peer mentoring through the Saskatchewan Youth in Care and Custody Network (SYICCN) from age 18 until they reach their 25th birthday, if they have entered into a section 56 agreement with the Ministry.

[31] Saskatchewan, Ministry of Social Services, *Children's Services Policy and Procedures Manual* (April 2010) at s.2.6.

10 Adoption

Issue

In 2009, the Children's Advocate commented in the report, *A Breach of Trust*, about a series of elements that would delineate a well-functioning child welfare system. Among other enumerated considerations, the following component was listed:

> "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."[32]

In Saskatchewan, there are countless stories and experiences of children being adopted by parents who seek to permanently bring them into their homes and make them part of their family. While there are some stories where the adoption has resulted in disruption, loss of connection to immediate and extended family, and ultimately ended negatively for both the child and the adoptive parents, more often than not, these adoptions have successful endings. In these cases, adoption has provided children with a sense of stability, continuity and a sense of belonging and permanence.

There are no guarantees that all adoptive placements will be successful; however as a society, we must do all that is possible to provide children who require a permanent out-of-home placement, with a chance for successful adoption. Children deserve the opportunity to grow up in a safe and secure permanent placement that will allow them to reach their fullest potential as citizens in our communities.

Unfortunately, there are, in our experience, far too many situations where children are never adopted and end up remaining in limbo or languishing in foster care or group homes until they age out of the system.

Although there is a provincial program established to facilitate the adoption of Saskatchewan children who are in the permanent care of the Ministry of Social Services, there have been serious shortcomings identified in the adoption process, which have impacted many children waiting for a permanent home.

A fairness investigation, concluded by the Children's Advocate Office and highlighted in our *2008 Annual Report,* identified several issues that were confirmed by senior Ministry of Social Services staff members to be provincial in scope, and conspired to negatively impact the permanency planning and adoption of children in care of the Minister. The investigation identified the following issues as areas of specific concern:

- Children made permanent wards not being registered for adoption within the standards set out in Ministry of Social Services policies.
- Staffing pressures resulting in permanency planning staff being reassigned to protection caseloads resulting in children not being registered for adoption.
- Concurrent permanency planning not sufficiently addressed in policy, including fostering with a view to adoption.

[32] *Supra* note 6 at 6.

- No provincial data system available to summarize information respecting children waiting to be registered for adoption to analyze trends and take action.

The results of the fairness investigation reflected many of the issues that were also identified in the report of the *Children and Youth in Care Review* in 2000. The Review revealed other impediments to successful permanency planning, which were identified as:

- Not moving forward with a permanent plan for care and leaving children in limbo, which may be destructive to children's mental health.
- An escalating number of children in long-term care, which increased the number of children remaining in foster care, and overloading the foster care system.
- Not having a system of open adoption where a child could maintain contact with biological family that would provide stability for a child. A legislated open adoption program could also foster an increase in families moving forward with placing a child for adoption, as they would be assured of maintaining some form of contact with their child.

As part of a consultation with the Children's Advocate Office, some adoption and legal professionals shared their experiences regarding the adoption process and identified several concerns, which were impeding the successful adoption of children in Saskatchewan. These concerns are as follows:

- The view that adoption has not been embraced as an effective and desirable permanency planning solution in Saskatchewan.
- The community is uninformed about adoption in Saskatchewan and the role adoption can have for children in need of permanent families.
- A lack of government support for fostering to adopt programs.
- Professionals who are working for the Ministry of Social Services with limited understanding of the process and the implications of adoption for children and their families.
- A reduction of government services to expectant parents regarding crisis pregnancy and adoption planning.
- Unreasonable time frames to conclude the home study process.
- The limited option of closed adoption, and no legislated program of open adoption. Contacts between birth parents or extended family and their adopted children have been strictly voluntary.
- There has been recognition of the historical injustice imposed on Aboriginal children and their families concerning the removal of children from their homes in large numbers, which began during the 60's. The issue continues to impact the push and pull of Aboriginal communities' desire to maintain control and contact with their children, at the risk of not moving forward with a permanent plan for their future stable and consistent care.

As the number of issues identified in the reports and consultation demonstrate, notwithstanding the fact that many adoptions are successful, more children are left without an opportunity for a permanent home due to: the limitations of the current closed adoption legislation, policy, programming and practice; Ministry of Social Services staff not following policies, particularly for registering and placing permanent wards for adoption within the prescribed time periods; and Aboriginal peoples' mistrust of the concept of adoption with the current limited processes and options for adoption.

It is clear to the Children's Advocate Office that changes to the current adoption system in Saskatchewan must occur. Doing nothing to deal with children languishing in foster care

without a permanent plan is not an option. However, working collaboratively with Aboriginal and other stakeholders to build more safeguards into the adoption process, where Aboriginal children are at the centre of adoption plans, may begin to address issues, which have been identified.

As stated in the Children Advocate's commentary in our *2008 Annual Report*:

> "It is also important to build more safeguards into the adoption process so that First Nations children, who are adopted as permanent wards, are not arbitrarily and absolutely denied ongoing contact with their culture, community and identity. If more First Nations foster parents and prospective adopters come forward, and if additional legislative options are created, which support 'open' and 'custom' adoption, there would be less objection to those adoptions and earlier permanency resolutions for such children."[33]

In this context, we should be ensuring that children in permanent care are given the opportunity to enjoy the best of all worlds—permanency in an adoptive home and ongoing contact with their family, community and culture—rather than being limited to the artificial choice of one legislated option or the other.

Recommendations

10-16877 (New)

That the Government of Saskatchewan amend *The Adoption Act* (or any legislation replacing this Act) to provide for openness in adoption, by means of legally enforceable agreements or court orders, so that permanent wards can have the benefit of enjoying both the permanent sense of belonging to an adoptive family, while maintaining contact with their family, community and culture.

10-16878 (New)

That the Government of Saskatchewan amend *The Child and Family Services Act* (or any legislation replacing this Act) or its Regulations to set out as legal requirements the time periods for registering and placing permanent wards for adoption that are currently only referenced in Ministry of Social Services policy.

[33] Saskatchewan, Children's Advocate Office, *2008 Annual Report* (2009) at 7.