

Office of the Child and Youth Advocate

**Submission to the
Honourable Robert A. Fowler (R)**

**Review of Statutory Offices of the
House of Assembly**

May 2023





**"If we don't
stand up for
children...
then we
don't stand
for much."**

- Marian W. Edelman



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Introduction

On December 5, 2022, the government announced a review of the independent statutory offices of the House of Assembly (excluding the Auditor General) and the Terms of Reference that would govern the review. The Office of the Child and Youth Advocate welcomes the opportunity to participate in the review and is very concerned about any contemplated changes to the structure of statutory offices that results negatively upon the rights of children and youth.

The context which resulted in the announcement of this review and its accompanying Terms of Reference demonstrate that this review arose largely out of a one-time dispute between two statutory officers who were performing their statutory duties, the Chief Electoral Officer, and the Citizen's Representative. The dispute between these officers was set against the background of the unprecedented pandemic election of 2021, and did not concern the Office of the Child Youth Advocate. While any statutory office may benefit from review and criticism, the rights of children and youth should not be diminished, or their voices silenced, as a result of disagreement between other entities not involving children.

The Child and Youth Advocate has serious, well-founded concerns about the potential for the amalgamation of the OCYA's mandate with any other statutory office. As eloquently stated by Marvin Bernstein B.A., J.D., L.L.M. (ADR), the current Prince Edward Island Child and Youth Advocate, former Saskatchewan Child and Youth Advocate, and former Chief Policy Advisor to UNICEF:

“For one thing, research and experience have taught us that independent offices that don't have a singular focus on vulnerable children and are not rights-based are less likely to be successful in enabling children and youth to achieve positive life outcomes. When the interests of children and adults are intermingled in independent Offices, the interests of children are usually diluted, and monies earmarked for children's services often end up being redirected to address weaknesses in adult services.” (Bernstein, 2018).

As will be demonstrated herein, the current trend in Canadian provinces is to have a statutory office that is dedicated solely to advocating for children and youth. This trend is in keeping with the comments of the Canadian Bar Association:

“Children are affected by the action, or inaction, of governments more than any other group and the cost of failing to protect children is too high. Children are more vulnerable to exploitation and abuse, public policy and services for children are fragmented, and children fall through the cracks. Indigenous children, in particular, are at significant risk”. (Canadian Bar Association, n.d.)

The Office of the Child and Youth Advocate (OCYA) is exclusively child and youth focused and is legislatively mandated by the **Child and Youth Advocate Act** to protect and advance the rights of children and youth in Newfoundland and Labrador. The Child and Youth Advocate is an independent statutory officer of the Legislature and carries significant authorities in this role. This Office provides independent public oversight of government departments that deliver programs and provide services to children and youth. Holding government to account in the delivery of services to vulnerable children and youth is in the public interest of all Newfoundlanders and Labradorians, and in particular Indigenous populations. This accountability function should not be intermingled with other statutory offices as it sends a message that the rights and voices of children and youth lack priority and importance.

The OCYA also helps young people by independently standing up for their rights and interests in dealing with child serving systems. Specific functions include investigations and reviews, individual and systemic advocacy, and public education on children and youth human rights.

The work of the OCYA is guided by the **United Nations Convention on the Rights of the Child (UNCRC)**, a comprehensive international child rights framework that supports children's development and well-being. The four guiding principles of the **UNCRC** are:

1. Non-discrimination – all rights apply to all children without exception.
2. Best interests of the child – this must be the first consideration in all decisions affecting children.
3. Life, survival and development – all children have the right to live and survive, and to develop to the maximum degree possible.
4. Participation – all children have the right to be heard and to participate in decisions affecting them in a way that is reflective of their age and developmental level.

The **UNCRC** exists because children and youth are a unique and vulnerable group and therefore require special protection of their rights. They cannot navigate systems like many adults can. Their views, experiences, and perspectives are frequently missing from public policy consultation, debate, and development.

This submission will outline the history of the OCYA, including the historical significance in creating the position of a Child and Youth Advocate, an overview of the work of this office, a jurisdictional comparison of the legislative mandates of child and youth advocates, representatives and ombudsmen across Canada, and a discussion on the importance of maintaining an independent and dedicated advocate for the rights of the children and youth who reside in Newfoundland and Labrador.

History of the Newfoundland and Labrador Office of the Child and Youth Advocate

Overview

On November 29, 2001, **Bill 46: An Act Respecting the Child and Youth Advocate** (2001) was introduced into the House of Assembly. **The Child and Youth Advocate Act** (2001) was proclaimed on May 12, 2002, and the Office of the Child and Youth Advocate opened on November 18, 2002.

1991: Canada Ratifies the United Nation Convention on the Rights of the Child

The history of child and youth advocate's offices in Canada can be traced back to the signing of the **United Nations Convention on the Rights of the Child** (the "**UNCRC**"). The **UNCRC** is an international treaty that built upon the **Geneva Declaration on the Rights of the Child** from 1924, and the **Declaration of the Rights of the Child** which was adopted by the UN General Assembly in 1959. In 1989 world leaders made a historic commitment to the world's children by adopting the **UNCRC**-an international agreement on childhood. It has since become the "most widely ratified human rights treaty in history and has helped transform children's lives around the world". (UNICEF, n.d.). The **UNCRC** was ratified by Canada on December 13, 1991.

Under Sections 91 and 92 of the **Constitution Act** (1982), the responsibility for the rights of children falls in both federal and provincial jurisdictions. For this reason, Canada's ratification of the **UNCRC** was one of the reasons why the provinces began to establish child and youth advocate's offices in the early 1990's.

1993: The Paris Principles

In the early 1990's there was a growing endorsement across the world for countries to establish national human rights institutions. In 1993 the United Nation General Assembly endorsed the **Paris Principles** (1993) which outlined international benchmarks by which human rights institutions could be assessed at both the regional and national level.

The first principle set out in the **Paris Principles** is independence. It is stated that independence should be guaranteed by legislation or constitution. Independence allows human rights institutions to carry out its mandate without government interference, allowing the institution to become critical of government if necessary. (Howe, 2009) The Paris Principles emphasize the importance of a broad mandate based on universal human rights standards and broad functions to ensure that human rights institutions can deliver their mandate. In the context of human rights institutes specifically for children, "a broad mandate allows a representative to not only remedy individual concerns but also address systemic issues facing children and youth". (Wood, 2020)

1996: House of Assembly Select Committee on Children's Interests

After Canada ratified the **UNCRC**, the Newfoundland and Labrador House of Assembly established a Select Committee on Children's Interests (the "Committee"). In 1996 the Committee published a report titled **LISTENing & ACTing: a plan for child, youth and community empowerment** (Honourable L.G. Snow, 1996). The report notes that during public consultations, the Committee heard from many presenters that there was a lack of effective mechanisms to represent the interests of children and youth in Newfoundland and Labrador.

The Committee report describes a growing interest in the promotion and protection of children's rights and quotes a textbook by Martin Rosenbaum and Peter Newell which summarizes the global movement toward establishing territorial children's rights commissioners as follows:

There has been an international trend towards:

- a) Recognizing the lack of input from a children's perspective into many decisions which affect them: and
- b) Consequently the creation of institutions to promote children's interests and rights (at national or local levels) with the following important characteristics:
 - i) the institution is established by a public authority and has some sort of official status:
 - ii) it is substantially if not completely independent in actions and attitudes;
 - iii) it has a wide-ranging remit across different policy areas.

The Committee recommended creating an Advocate's Office with the following components in its mandate:

- 1) An Independent Office;
- 2) A Government-Wide Mandate;
- 3) A "Systems" Advocate;
- 4) A Research Office;
- 5) A Provincial Clearing House;
- 6) A "Pendulum" Monitor.

(Honourable L.G. Snow, 1996)

2001: House of Assembly Debate on the Bill 46: An Act Respecting the Child and Youth Advocate

Acting upon the recommendations of the Committee, **Bill 46: An Act Respecting the Child and Youth Advocate** was drafted and introduced into the House of Assembly on November 29, 2001. Upon introduction of Bill 46, the Honourable Julie Bettney, then Minister of Health and Community Services, stated:

“This legislation reflects a commitment that was made by our government to establish an effective and transparent system of advocacy for children. The establishment of a Child and Youth Advocate is another important step in recognizing the United Nations Convention on children and the rights of the child.

We recognize the need for integrating services across government departments, and in this regard we recognize that establishing our Child and Youth Advocate will help to make our systems work better around children. It will allow for continual review and improvement of programs and services available to children and youth in this Province.

The advocate will have a mandate to provide support to children and youth who receive services from any government department or agency. The primary responsibility of the advocate will be to assist children and youth to resolve the issues in relation to the services that they receive. In this regard they will work with the department or agency, and with the child, to try and bring a successful resolution to any concern or issue that may have been brought forward.

This ensures that they have a voice - that children will have a voice - and will be supported where there is not a natural support system available, or where the natural support system that is available just has not been successful and it has not worked for the child.

Of course, in addition to that, this legislation provides an additional scope of mandate. The advocate will also have the ability to conduct investigations where he or she is unable to resolve the matter through advocacy, perhaps through mediation or through other less adversarial approaches.”

(NL House of Assembly, 2001)

The Honourable Harvey Hodder, former Speaker of the House of Assembly, and member of the Committee stated:

One of the best pieces of research consulted by the select committee is a book written by Martin Rosenbaum and Peter Newell, published in 1991 in London and appropriately entitled Taking Children Seriously: A Proposal for a Children's Rights Commissioner.

Mr. Speaker, Bill 46 reflects the general principles outlined by Rosenbaum and Newell for the creation of the Office of a Child and Youth Advocate. Mr. Speaker, I would also want to recognize the consultations that our committee had with Professor Alastair Bissett-Johnson, a renowned, internationally known legislator, a law professor. He had worked in Nova Scotia. He had worked also in London. He drafted some wonderful pieces of legislation involving children. He currently resides in England.

Mr. Speaker, it was people like Professor Bissett-Johnson who encouraged the committee to move forward and to always have as our focus the best interests of children. **Mr. Speaker, I note positively the commitment of government to keep the office an independent officer of the Legislature. In other provinces, I will note, where the office was mistakenly answerable to a line ministry, there has been a history of frustration, and in some cases a history of absolute intimidation.**

However, that is not to say, Mr. Speaker that the only role of the advocate is to be critical; far from that. Mr. Speaker, the role is to look independently at situations, independently at problems and policies, and feel independent, absolutely independent, to comment thereon.

I must again refer to the comments of Bruce Rawson in his assessment of the modern bureaucracy. The office of the advocate must do more than deflect criticism, must do more than avoid errors, must do more than justify actions. The best interests of the children, as Professor Alastair Bissett-Johnson would say, must be served.

(NL House of Assembly, 2001)

Following a lengthy debate and several amendments, Bill 46 was assented to on December 13, 2001.

The Child and Youth Advocate Act

The **Child and Youth Advocate Act**, SNL 2001, c. C-12.01, sections 3 and 15 state:

Office of Child and Youth Advocate established

3. The Office of the Child and Youth Advocate is established
- (a) to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;
 - (b) to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;
 - (c) to provide information and advice to the government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth;
 - (c.1) to review and investigate matters affecting the rights and interests of children and youth; and
 - (d) generally, to act as an advocate of the rights and interests of children and youth.

Powers and duties of the advocate

15. (1) In carrying out the duties of the advocate's office, the advocate may
- (a) receive, review and investigate a matter relating to a child or youth or a group of them, whether or not a request or complaint is made to the advocate;
 - (b) advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them, whether or not a request or complaint is made to the advocate;
 - (c) where advocacy or mediation or another dispute resolution process has not resulted in an outcome the advocate believes is satisfactory, conduct an investigation on behalf of the child or youth or a group of them, whether or not a request or complaint is made to the advocate;
 - (d) initiate and participate in, or assist children and youth to initiate and participate in, case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services;
 - (e) meet with and interview children and youth;
 - (f) inform the public about the needs and rights of children and youth including about the office of the advocate; and
 - (g) make recommendations to the government, an agency of the government or communities about legislation, policies and practices respecting services to or the rights of children and youth.
- (2) The advocate may not act as legal counsel.

Through this legislative mandate the OCYA is able to do our work of protecting the rights of children and youth in this province and ensuring their voices are heard in matters that affect them. Below is a more detailed outline of how we carry out this important mandate.

Work of the Office of the Child and Youth Advocate (NL)

Mandate

The OCYA is responsible for promoting and protecting the rights of all children and youth in the province and providing public oversight of government programs and services. We advocate to ensure children and youth have access to services they are entitled to, that their issues receive appropriate attention, and their voices are heard in matters affecting them.

We are mandated by legislation through the **Child and Youth Advocate Act** (2001), to protect and advance the rights of children and youth. Our advocacy work is also guided by the **United Nations Convention on the Rights of the Child** (1989), the **United Nations Declaration on the Rights of Indigenous Peoples** (2007), the **United Nations Convention on the Rights of Persons with Disabilities** (2007), and other policies and laws. Our primary clients are children and youth under the age of 19. If a young person is in extended care or custody, they are eligible until the age of 21.

Budget and Staffing

The budget approved for Fiscal Year 2023-24 was \$1,493,700, 83% of which is allocated for the salaries of the OCYA team. The OCYA team includes:

- Child and Youth Advocate
- Director of Individual Advocacy and Investigations
- Director of Strategic Services and Outreach
- 4 Systemic Advocacy Consultants
- 3 Individual Advocacy Specialists
- 1 Communications Officer
- 3 Administrative Staff

The OCYA team have a varied background of education and expertise including, but not limited to, social work, law, nursing, education, and psychology.

What We Do

The core foundation of our work is advocacy. Advocacy is “the strategic and deliberate process to bring about change in policies and practice” (Bendo, 2017). The OCYA has four main pillars of our advocacy work:

- Individual advocacy;
- Systemic advocacy;
- Reviews and investigations; and
- Children’s Rights Education and Outreach

Individual Advocacy

Young people and concerned adults call the OCYA seeking help resolving grievances related to services provided to them by the Government of Newfoundland and Labrador. Our individual advocacy specialists support children and youth, their families, caregivers, or professionals involved in their care in exercising their rights by providing assistance to: voice their concerns, access information, resolve issues with service providers or to identify available support options in their communities.

Over the last six years the OCYA individual advocacy specialists have responded to an average of nearly 400 requests per year for advocacy assistance. In addition to these requests for advocacy, each year the specialists also respond to an average of 160 shorter-term requests for information, as well as assistance with navigating various systems of government and its agencies. The actions and inactions of the Department of Children, Seniors and Social Development (CSSD) has consistently been the highest department or agency of focus. In the 2021-22 fiscal year CSSD was the focus of 282 requests for formal advocacy services.

As of December 31, 2022, CSSD had a total of: 3,450 children and youth receiving protective intervention services; 645 children and youth living in kinship arrangements; 240 youth receiving residential and non-residential youth services; and 910 children in the care and custody of the Managers of CSSD. Of the 910 children in-care, 300 are identified as Indigenous (Dept. of CSSD, 2023). The OCYA provides an important rights-based advocacy service for these children, youth, their parents, extended families, caregivers, and professionals involved in these young peoples lives.

In addition to advocacy requests related to the Department of CSSD, the OCYA responds to other individual issues related to education, youth justice, health, housing, and more.

Systemic Advocacy

Our systemic advocacy work is focused on broader issues related to government services, policies, practices, and laws that affect larger groups of young people. For example, in 2018 and 2019, the OCYA released reports on surviving child benefits and child support payments which outlined our concerns that these funds were being clawed-back from income support payments in this province. In both reports, the OCYA recommended that the provincial government discontinue these practices and set up mechanisms to ensure the benefits are protected for the vulnerable children and youth they are intended to provide for. (Office of the Child and Youth Advocate, 2018 and 2019). Through systemic advocacy, child and youth advocates prevent harm to children, enhance their well-being, and uphold their rights, including the right to be heard. (Wadlock, 2020).

Reviews and Investigations

The OCYA undertakes sensitive investigations and reviews into deaths, critical injuries, and exceptional circumstances when there is a question of whether the child or youth received the appropriate services from the provincial government to which they are entitled. These reviews and investigations identify underlying gaps and deficiencies in policies, programs, and service delivery that put young people at risk. Recommendations are aimed at addressing necessary changes to prevent future injuries, deaths, or traumatic experiences. (Wadlock, 2020).

Education and Outreach

The final pillar of our work is the province-wide education and outreach we provide where we educate young people, their families, and professionals about the children's rights and the services provided by the OCYA.

We are mandated to provide education on children's human rights. In this role, we are able to connect with children and youth, to learn directly about their issues at the community level, and to hear from others who are committed to improving services and responses to young people in Newfoundland and Labrador.

In our education role, we may offer sessions to schools or youth groups, provide book readings to young children on rights-based themes, speak at conferences, deliver professional development workshops, and participate in cultural and community events. In the 2022-23 fiscal year we facilitated 46 engagement sessions connecting with over 1,100 children, youth, and community partners.

Reports, Recommendations and Implementation

The OCYA reviews and investigations result in recommendations for meaningful and child focused changes to government policies, procedures, programs, and service delivery. These recommendations focus on improvements to ensure better responses and services respecting children and youth rights in the province. Section 24(1) of the **Child and Youth Advocate Act** (2001) authorizes the Child and Youth Advocate to request progress reports on these recommendations.

The Child and Youth Advocate requests annual written updates of government departments, agencies, and public entities on their progress implementing recommendations. In addition to the written responses, follow up meetings may be required for clarification or additional information.

The OCYA assesses the progress update and assigns the recommendation to one of the following three categories: implemented, partially implemented, or not implemented. In the event that a recommendation involves multiple entities, the recommendation will remain in the partially completed category until all elements of the recommendation are implemented.

Updates on each recommendation are requested annually until the OCYA is satisfied that the recommendation has been addressed. The results are reported publicly and these reports can be found on our website. It is vital for children, youth, as well as their families and the public to see in a transparent and accountable manner that each recommendation for change and improvement is acted upon.

At March 31, 2021, 78% of **251** recommendations made by the Child and Youth Advocate have been implemented, 22% have been partially implemented, and there are no recommendations that have not been implemented. (Child and Youth Advocate, 2022). The 2021-22 Status Report on Recommendations is currently in progress and will be publicly available later this year.

All of the recommendations made by the OCYA have resulted in changes which positively impacted the rights and interests of children and youth in this province. To date, the OCYA has completed more than 25 investigative and systemic reports. While we cannot highlight all of the concrete improvements our reports and recommendations have made to the services and responses for children and youth in this province, we would like to highlight a few below.

Culturally Responsive Services of Front-line Workers

Following the release of our investigative report **The Case for Culturally Responsive Services**, the Government of NL implemented our recommendation of mandatory cultural sensitivity training for all front-line workers who interact with culturally diverse families, children, and youth. (Child and Youth Advocate, 2017)

Specialized Child Protection Services to Indigenous Children and Youth

The OCYA made a large number of recommendations in our special report, **A Long Wait for Change: Independent Review of Child Protection Services to Inuit Children in Newfoundland and Labrador**, an independent review into the child protection services provided to Inuit children in our province (Child and Youth Advocate, September 2019). Since the release of that report, the Department of Children, Seniors and Social Development have created a policy and program development specialist position specifically designated to address the unique circumstances of Indigenous children and youth receiving child protection services.

Elimination of Child Support Payment and Surviving Child Benefit Payment Recovery

The OCYA's systemic report **Making Waves**, resulted in the Government of NL ceasing the practice of recovering dollar for dollar the child support payments made to the children of parents who receive income support- the majority of whom were single mothers (Child and Youth Advocate, May 2018). This improved the financial well-being of those most vulnerable to poverty and advanced the rights of the children to have an adequate standard of living.

Following the release of **Making Waves**, the OCYA was contacted by families who reported that their child's Canada Pension Plan Surviving Child Benefit, paid to children of deceased parent, were also being recovered by the Department of Advanced Skills, Education and Labour as non-exempt family income, reducing the amount payable to families who receive income support. The OCYA released another systemic report **Surviving Child Benefits: Who is Missing Out** which resulted in the cessation of this practice and improved financial well-being of the vulnerable children to whom the benefits were intended to assist (Child and Youth Advocate, March 2019).

Improvement of Trauma-Informed Responses to Children and Youth

The OCYA investigative report **A Soft Place to Land: Lessons for Child-Centered Care**, which discussed the suicide of a teen in care, resulted in the implementation of trauma-informed care training for a variety of professionals who interact with at-risk youth including emergency room physicians and nurses, social workers, and other front-line mental health and addictions workers. (Child and Youth Advocate, October 2020)

A trauma-informed policing response seminar was also delivered to members of the Royal Newfoundland Constabulary following the OCYA report **Handle With Care**. This investigation looked at the response of the mental health crisis team in a case involving a seven year old child who experienced a mental health or behavioural episode while residing with her mother at a shelter for victims of family violence. (Child and Youth Advocate, 2021)

Focus on Chronic Absenteeism in Schools

In 2019 the OCYA released a systemic review which focused on chronic absenteeism in schools, the factors influencing it, the impacts on students, and promising strategies to address the problem. The report, titled **Chronic Absenteeism: When Children Disappear** also made four recommendations to government departments and agencies that have shared responsibility for solutions. (Child and Youth Advocate, 2019)

Following the release of this report, the Department of Education expanded the Positive Actions for Student Success (PASS) program, allocating eighteen (18) additional Student Success Teachers (SST's) units and opening up eligibility to include students at the intermediate level. This increase and expansion into grades 7-9 is in recognition of the success of the program at the senior high level and based on research that early interventions are key in responding to students who are at risk of leaving the education system. With the expansion, SSTs were present in 43 schools throughout the province, working with more than 1,800 students, approximately 21% of which were in Grades 7-9.

During the 2021-22 school year, further expansion occurred, with SSTs working in approximately 58 schools (25 intermediate and 33 high schools). At the high school level, approximately 1,900 students received support from an SST.

Also following the release of **Chronic Absenteeism**, the Eastern Regional Health Authority's Mental Health and Addictions program placed Child and Youth Care Counsellors in a number of junior and senior high schools.

Mandatory Reporting and Trend Tracking

On November 7, 2017, the Newfoundland and Labrador House of Assembly voted to amend the **Child and Youth Advocate Act** (2001) to add Section 16.1 which provides for mandatory reporting of deaths and critical injuries to the Child and Youth Advocate. Section 16.1 applies to children and youth in care, protective intervention, kinship, youth services, and youth corrections programs, as well as children and youth at the Newfoundland and Labrador Youth Centre, or temporarily housed in correctional holding facilities.

A former Child and Youth Advocate, Carol Chafe, formally called for the amendments in 2014. When the legislation was passed in 2017, then Child and Youth Advocate , Jackie Lake Kavanagh, stated "Many children and youth who are in the care, protection or custody of government face the unique vulnerability of lacking the natural advocates and supports of their families. Increased oversight and advocacy services for these children and youth is needed to ensure their rights are protected. Mandatory reporting will create an automatic notification to ensure this can occur."

The **Act** already enabled the OCYA to inquire, review, or investigate any matter related to the rights and well-being of children and youth, regardless of whether a complaint is received. However, the authority was enhanced because of the mandatory notification requirements for the most vulnerable children in the system. In addition to allowing the

OCYA to react sooner to cases that warrant further inquiry, the mandatory reporting allows the OCYA to track trends in critical injuries and deaths in children under the watch of government services. If a concerning trend is identified, the Advocate for Children and Youth can then conduct a review or investigation into the circumstances.

Since Mandatory Reporting commenced in March 2018, the Department of Children, Seniors and Social Development have reported 276 critical injuries and 27 deaths. The Department of Justice and Public Safety reported no deaths and 2 critical injuries.

Business Plan and Annual Reports

The OCYA is designated as a Category 2 entity under the **Transparency and Accountability Act** (2004). The Advocate is accountable for the preparation of a business plan every three years and for the achievement of the identified goals and objectives stated therein.

A 2023-26 Business Plan is currently in development and will be publicly released in June 2023. The current 2020-23 Business Plan focused on the unique challenges faced by the OCYA and by the children and youth we served during the global pandemic.

In conclusion the report states:

As advocates for children and youth, we are agents of change. We take this responsibility very seriously because we know how important it is to protect children's rights. While this plan does not articulate all of the work we will do over the next three years, it identifies key strategic issues that we will focus on, and weave throughout our work. We look forward to this opportunity and dedicate ourselves with purpose.

(Child and Youth Advocate, 2020)

Also in accordance with the **Transparency and Accountability Act**, the OCYA releases an Annual Report which details the work completed by the OCYA in a given year including, but not limited to: the requests for individual advocacy; the systemic and investigatory reports completed; the education and outreach sessions conducted; and the professional development activities of our staff.

These publicly available business plans, annual reports, and the strategic planning activities we complete at the OCYA provides for an established mechanism for the transparency, performance evaluation, quality assurance, accountability, and oversight of the Child and Youth Advocate's Office.

Partnerships

Community Organizations

The OCYA works closely with community partners in ensuring the rights and interests of children and youth in this provinces are respected and protected. Some of the community partners we work with include the Association for New Canadians, THRIVE, Choices for Youth, Community Youth Networks, Family Resource Centers, Trans Support NL, Sharing Our Cultures, and more.

Memorial University

School of Social Work

The OCYA is a Memorial University School of Social Work training site. Every year one of the Registered Social Workers employed at the OCYA provide field instruction and oversee the internship of one or more social work students. This opportunity provides students with the opportunity to gain a strong understanding of children's rights and the role of the OCYA in the promotion and protection of those rights. Further, it enforces the role of children's rights in policy and practice with respect to service delivery. In addition, the internship opportunity provides skill development in advocacy- one of the primary tenants in social work practice.

Faculty of Medicine

Each year the OCYA facilitates a session with over 200 MUN students from the faculties and schools of Social Work, Pharmacy, Nursing, Medicine, and Kinesiology as part of the Centre for Collaborative Health Professional Education inter-professional education (IPE) activities.

Indigenous and Cultural Organizations

The OCYA has close working relationships with a number of Indigenous partners such as First Light (formerly the Native Friendship Center), Qalipu First Nation, the Nunatsiavut Government, and has held multiple clinics in northern Labrador. In 2021, our office partnered with the Mushuau Innu Natuashish School and released a calendar featuring artwork created by the students.

Independent Review of Inuit Children's Experiences with the Child Protection System

Following the 2017 announcement from the Government of Newfoundland and Labrador that it would conduct an inquiry into the treatment of Innu children in the child protection system, the Nunatsiavut Government made a formal request for the OCYA to conduct an independent review of Inuit children's experiences. In consultation with the Nunatsiavut Government, the OCYA developed the terms of reference which included an in-depth analysis of why the child protection system is not producing favourable outcomes for Inuit children. The report, **A Long Wait for Change** was released in

September 2019. The OCYA made 33 recommendations for changes that would benefit the rights of Inuit children. (Child and Youth Advocate, 2019)

Standing at the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System

In December, 2022, the Child and Youth Advocate was granted standing to participate in the Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System which is currently underway. In its decision, the Commissioners acknowledged the unique relevance of the Child and Youth Advocate and the role of this office. The Commission granted the OCYA standing in respect of the following Formal Hearings:

- History of the Innu;
- History of child protection in relation to the Innu;
- Legislation, policies and practices of the child protection system in relation to the Innu;
- Each of the six investigations to be undertaken pursuant to section 4(2) of the Terms of Reference

The Child and Youth Advocate is also provided standing to provide written and oral submissions with respect to findings of fact and recommendations at the conclusion of the inquiry. Legal counsel for the Child and Youth Advocate will assess the evidence provided in the course of the inquiry and make any necessary submissions.

Given the current over-representation of Indigenous children and youth in the child protection system and past treatment of Indigenous peoples, the Child and Youth Advocate has an invaluable independent role in the oversight of systems that historically have not been responsive to the unique needs and rights of Indigenous children and youth.

National Landscape and Jurisdictional Comparison

Canadian Council of Child and Youth Advocates

The Canadian Council of Child and Youth Advocates (the “CCCYA”) is an association of children's advocates from across Canada who have mandates to advance the rights of children and youth and to promote their voice. The Newfoundland and Labrador Child and Youth Advocate is an active member of this national council with two of its former Advocates securing positions at the executive level during their tenure.

Although the names of the offices and their legislative mandates vary, the advocates are all independent officers of the legislature in their respective jurisdictions. Through the Council, they identify areas of mutual concern, and work to develop ways to address

issues at a national level. The Council's vision is that the rights, interests, and well-being of all children and youth are valued and respected in Canadian communities and in government legislation, policy, programs, and practices.

All CCCYA member office's work is grounded in the **UNCRC**. It is the role of CCCYA to help hold governments accountable for meeting their legal obligations under this convention. Despite the **UNCRC** and Canada's strong economic, environmental, and social conditions, the CCCYA continues to identify and advocate for many gaps in systems.

In 2019, prior to the global pandemic, the CCCYA released **A National Paper on Youth Suicide** highlighting this issue as a mental health crisis for Canadian youth. The Paper made several Calls to Action that included a fully resourced National Suicide Strategy with designated funding to the provinces and territories. (CCCYA, September 2019)

The CCCYA has also been quite vocal about the need for Canada to repeal Section 43 of the **Criminal Code** (1985) which legally permits corporal punishment of children and has been used to defend assault of children for the purpose of corrective discipline. While there are limits on the force that can be used, legal interpretation and application of these limits have been inconsistent, resulting in children not being afforded the same protections against violence that are taken for granted by adults. Section 43 goes against the solid body of research demonstrating the immediate and long-term harms that corporal punishment imposes on children, and on society generally. The CCCYA will continue to advocate as a group against this and other issues impacting the well-being of young persons in our country.

The North West Territories is the only Canadian province or territory without an advocate, representative or ombudsman. Below is a brief comparison of the legislation and services provided by each of the Canadian offices.

Provincial/ Territorial Child and Youth Advocates/ Representatives

British Columbia Representative for Children and Youth

The British Columbia Representative for Children and Youth is an independent officer of the Legislature, reporting directly to the Legislative Assembly. Their mandate is similar to the OCYA and they provide both individual and systemic advocacy, make recommendations to, and work with, government service providers and partners to strengthen services for vulnerable children and youth. (Representative for **Children and Youth Act**, SBC 2006 c 29)

Like the OCYA, the British Columbia Representative for Children and Youth reports publicly on monitoring and evaluation activities, including issuing reports on the implementation of recommendations.

The Legislative Assembly of British Columbia have a Select Standing Committee on Children and Youth as one of 10 permanent committees of the legislature. The

Committee works to foster greater awareness and understanding among legislators and the public of the B.C. child and youth-serving system. The Committee also provides a public forum for discussion of reports by the Representative for Children and Youth, and undertakes a review of the **Representative of Children and Youth Act** at least once every five years as required by section 30 of that **Act**.

On April 26, 2023, the Committee released its first report, **Review of the Representative for Children and Youth Act**, making 28 recommendations, several of which aim to expand the mandate of the Representative for Children and Youth. (Legislative Assembly of BC, 2023)

Alberta Office of the Child and Youth Advocate

The Alberta Office of the Child and Youth Advocate is an independent office of the Legislative Assembly of Alberta, mandated to work with vulnerable young people. The Alberta OCYA provides individual and systemic advocacy, and conducts investigations in serious injuries and deaths for children and youth receiving designated services as defined under their **Child and Youth Advocate Act**. The designated services include a service under the **Child, Youth and Family Enhancement Act** (except Adoption), a service under the **Protection of Sexually Exploited Children Act**, or a service provided to children in the youth criminal justice system. They also offer education and outreach services. (**Child and Youth Advocate Act**, SA 2011, c C-11.5)

Unlike the Newfoundland and Labrador OCYA, the Alberta OCYA also provides access to legal representation for young people receiving child intervention services.

Saskatchewan Advocate for Children and Youth

The Saskatchewan Advocate for Children and Youth is an independent officer of the Legislative Assembly of Saskatchewan. The Saskatchewan OCYA provides advocacy services and conducts investigations into any matter concerning, or services provided to, children and youth by a provincial ministry, agency of the government, or publicly funded health entity (The **Advocate for Children and Youth Act**, SS 2012, c A-5.4). The Newfoundland and Labrador **Child and Youth Advocate Act** does not currently permit investigations or recommendations to be made to publicly funded services.

The SOCYA also conducts research and advises the public on any matter relating to the rights, interests, and well-being of children and youth. To fulfill the office's priority of amplifying the voices and perspectives of children and youth, and influence systems to improve their lives, the SOCYA established a Youth Advisory Council in 2020. They also established an Elder Advisory Council to advance the strategic priority of reconciliation to its fullest potential. (SK Advocate, n.d.)

Quebec Commission des droits de la personne et des droits de la jeunesse

The Commission was created in 1976 by the **Charter of Human Rights and Freedoms**. Its name and its current mission come from the merger, in 1995, of the Commission des droits de la personne and the Commission de protection des droits de la jeunesse.

The Commission's responsibilities include informing the public about rights recognized by the **Charter**, the **Youth Protection Act** and **Youth Criminal Justice Act**. The Commission can carry out investigations and make recommendations in cases of discrimination and exploitation (under the Charter) and in cases of violations of children and youth rights (under the **YPA** or the **YCJA**). The Commission undertakes and promotes research and publications on fundamental rights and freedoms and on children's rights. (Commission des droits, n.d.)

Yukon Child and Youth Advocate

The Yukon Advocate's Office is an independent office of the Yukon Legislative Assembly that represents the rights, views, and preferences of children and youth who are eligible, or currently receiving government services and programs. The Advocate Office services young people receiving services under the **Child and Family Services Act**, **Youth Criminal Justice Act**, and the **Education Act**. (**Child and Youth Advocate Act**, SY 2009, c 1)

Nunavut Representative for Children and Youth

The Nutaqqanut Makkuttunullu Kiggaqtuiji is an independent officer of the Nunavut Legislative Assembly. Similar to the OCYA's mandate, the Nunavut RCY's office provides the following four core services: individual advocacy; systemic advocacy; reviews of critical injuries and deaths; and public awareness and communications. (**Representative for Children and Youth Act**, S. Nu. 2013, c 27)

Prince Edward Island Child and Youth Advocate

The trend of child and youth advocate offices remaining separate and distinct from other statutory offices is further demonstrated by Canada's newest office in PEI which opened in 2020. The PEI Child and Youth Advocate is an independent officer of the Legislative Assembly. The Advocate can receive and investigate any matter that comes to the attention of the Child and Youth Advocate from any source about a child or youth (or group of children or youth) who receives or is eligible to receive a reviewable service. The PEI definition of reviewable service is the most expansive in Canada and includes:

- child protection programs and services pursuant to the **Child Protection Act**;
- adoption programs and services pursuant to the **Adoption Act**;
- social assistance programs and services pursuant to the **Social Assistance Act**;
- early childhood development and child care programs and services pursuant to the **Early Learning and Child Care Act**;
- educational programs and services pursuant to the **Education Act**, the **Early**

Learning and Child Care Act or the **Private Schools Act**;

- mental health and addiction programs or services and health programs and services pursuant to the **Health Services Act**;
- programs and services provided or administered by the Department of Justice and Public Safety pursuant to the **Youth Criminal Justice Act** (Canada), the **Divorce Act** (Canada), the **Police Act**, the **Judicature Act**, the **Children’s Law Act**, section 40 of the **Mental Health Act**, or the **Victims of Family Violence Act**; and
- any other program or service specified in the regulations.

(**Child and Youth Advocate Act**, SPEI 2019, c 21)

The Advocate may: assist in appealing or reviewing a decision relating to a reviewable service; advocate on behalf of a child or youth in relation to a reviewable service; review, investigate, and report on the serious injury or death of a child or youth; and make recommendations to government or community organizations responsible for reviewable services.

Unlike the OCYA, the PEI Child and Youth Advocate has a mandate which includes educational programs and services. During the 2001 debate on the **Child and Youth Advocate Act**, there was considerable discussion on the inclusion of the education system into the **Act**. Several MHA's saw the exclusion of the education system as a detriment to the mandate of the OCYA, however the **Act** did pass without its inclusion (NLHOA, December 10, 2001). The OCYA would like to see the Newfoundland and Labrador legislation modernized in line with PEI to include the education system.

The PEI Child and Youth Advocate has an annual budget of \$1,045,000 and a current total population of 170,688. By comparison, the OCYA budget is \$1,493,700 and we have a current total population of 531,948. This equates to \$6.12 per capita spending in PEI versus \$2.81 per capita spending on the Child and Youth Advocate operations in NL. (PEI, 2022; NL, 2022)

New Brunswick Child, Youth and Seniors’ Advocate

The New Brunswick Child, Youth, and Seniors Advocate is an independent statutory officer of the Legislative Assembly. The New Brunswick **Child, Youth and Senior Advocate Act** (2007) provides their Advocate with an expansive and non-restrictive mandate of providing advocacy services, including investigations and recommendations, into any service provided by an authority to children, youths, adults in protection and seniors primarily for the purpose of benefiting children, youths, adults in protection, and seniors.

Strategic Program Review of the Officers of the Legislative Assembly

In 2016, the Province of New Brunswick completed a review of the legislative offices similar to the review currently being completed in Newfoundland and Labrador. In the report titled **Strategic Program Review of the Officers of the Legislative Assembly**, the committee states that any regrouping or merging options should be mindful of the subject-matter expertise of legislative offices and their operational approaches to their work.

The report notes that it was suggested that combining the Child and Youth Advocate with the Ombudsman, as was done in Ontario, would not be an effective initiative as the mandates are substantially and operationally different, where one has an advocacy role and the other must approach matters with neutrality and impartiality. Additionally, combining mandates that are geared toward promoting, providing education, and ensuring compliance with constitutional and quasi-constitutional rights would not fit well within an adjudication legislative branch. (New Brunswick, 2016)

The Government of New Brunswick chose the option of establishing the newly created Seniors Advocate position under the existing structure of the Child and Youth Advocate's Office. However, a sentiment expressed by Payton Wood in the Canadian Family Law Quarterly, and shared by the OCYA is that "**resources are still split between two objectives, which diverts attention from the specific needs of children and youth**". (Wood, 2020)

The OCYA agrees that combining the mandate of the Child and Youth Advocate with the mandate of the Seniors Advocate would not be in the best interest of the children and youth in this province, nor seniors. Children and seniors rights are two very different areas of expertise. Diverting capacity and resources away from the specialized work of children's rights would be a disservice to both populations. Children need to continue to be the sole focus and their rights the primary goal. A Child Rights Impact Assessment should be conducted prior to any proposal which would potentially impact the rights of the children of Newfoundland and Labrador.

Manitoba Advocate for Children and Youth

The Manitoba Advocate for Children and Youth is an independent office of the Manitoba Legislative Assembly. The Manitoba OCYA represents the rights, interests, and viewpoints of children, youth, and young adults throughout Manitoba who are receiving, or should be receiving services from: child and family, adoption, mental health, addiction, education, disability, justice, and victim support (incl. for young people who are witnesses in criminal proceedings and any young person impacted by domestic violence or sexual exploitation). (The **Advocate for Children and Youth Act**, CCSM c A6.7)

The Honourable Ted Hughes Commission of Inquiry into the Death of Phoenix Sinclair

In 2011, the Honourable Edward (Ted) Hughes O.C., K.C., LL.D. (Hon), conducted an inquiry into the circumstances surrounding one of the most tragic and harrowing failures of a child-welfare system in Canadian history- the death of five year old Phoenix Sinclair at the hands of her mother and her mother's boyfriend.

In 2014, the Commission released a report titled **The Legacy of Phoenix Sinclair Achieving the Best for All Our Children** (Hon. E. Hughes, 2014). The report made 62 recommendations for improving services provided to children and youth. Thirteen of these recommendations (36-48) addressed the need for **“a truly independent officer of the legislature, with authority to advocate for all Manitoba children who receive, or are entitled to receive publicly funded services, and to report on matters that concern them”**.

The Commission recommended that the responsibility of the Ombudsman with respect to special investigation reports be removed and that this responsibility be assumed by the Representative for Children and Youth. The OCYA supports this position and views it as a best practice in advocating for the rights of children and youth.

Provincial Ombudsmen/Ombudsperson

Comparison of Advocate versus Ombudsperson

Children's commissioners, child and youth ombudsmen and child and youth advocates have been appointed throughout the world and across Canada. Although all provinces, with the exception of the Northwest Territories, have a representative on the Canadian Council of Child and Youth Advocates, the provinces of Ontario and Nova Scotia have ombudsmen in place of a children's advocate or representative.

By definition, “an Ombudsman is a neutral and impartial independent officer and is not a proactive and partisan child advocate who supports and amplifies the voices of children and young people” (Bernstein, 2018). Ombudsmen are not mandated to engage in advocacy. Ombudsman offices work to monitor compliance, systems, and ensure administrative fairness through investigations into individual complaints. (Bendo, 2021). Therefore it is said that ombudsmen focus on the system and advocates focus on the young person. Child and youth advocates and representatives work is guided by the **UNCRC** and often includes systemic advocacy which is focused on broader issues related to government services, policies, practices, and the laws that affect many young people.

Ontario Ombudsman

In November 2018, the Government of Ontario decided to close the Office of the Child and Youth Advocate and fold it into the Ombudsman. In 2019, the office was given the investigative function of the Provincial Advocate for Children and Youth and in December 2022, the Ombudsman released its first child-focused report.

The Ombudsman resolves and investigates complaints about matters concerning children and youth receiving services from Ontario children's aid societies, foster homes, group homes, secure treatment facilities, and youth justice facilities. The Ombudsman may: receive and review complaints; conduct investigations; review, analyze and follow up on Death and Serious Bodily Harm reports; promote and protect young people's rights; conduct outreach with community groups and professionals who help young people; and liaise with and provide advice to the Ministry of Children, Community and Social Services. (Ombudsman Ontario, n.d.)

Notably, the closure of the Ontario Child and Youth Advocate's Office has been widely criticized as being detrimental for vulnerable groups of young children, including Indigenous and racialized children who are disproportionately represented in the child protection system.

Nova Scotia Ombudsman

The Nova Scotia Ombudsman is an independent Officer of the Legislature. The Office provides an independent avenue to investigate individual complaints involving provincial and municipal governing bodies (NS Ombudsman, n.d.). Unlike every other Canadian jurisdiction, neither the **Ombudsman Act** nor their communications make any reference to its work being guided by the **UNCRC**.

In addition to the distinct roles performed by an advocate versus an ombudsman, the OCYA has a practical concern about the rights of children and youth being integrated with the Office of the Citizens' Representative. The mandate of the Citizens' Representative has broadened over the years to include whistleblowing under the **Public Interest Disclosure and Whistleblower Protection Act** (2014), as well as responsibility for the Harassment-Free Workplace Policy applicable to complaints against members of the House of Assembly. Given the already expansive role and functions of that office, it would not be in the best interests of children if their advocate was not child focused. When such intermingling of mandates occurs, it is the children who suffer despite the good faith efforts of all involved.

Importance of Independent Child and Youth Advocates

As mentioned previously, but its importance bears repeating, the Canadian Bar Association has stated:

“Children are affected by the action, or inaction, of governments more than any other group and the cost of failing to protect children is too high. Children are more vulnerable to exploitation and abuse, public policy and services for children are fragmented, and children fall through the cracks. Indigenous children, in particular, are at significant risk”. (Canadian Bar Association, n.d.)

Canada leads in negative statistics like youth suicide, children in care, and youth in juvenile detention. These statistics speak to the importance of having a child and youth advocate. ‘Advocacy’ is not just about identifying problems impacting certain young people or about addressing individual complaints, but oftentimes it is also about taking a preventative approach to become part of solutions to promote children’s rights to protect children and to ensure young people are not harmed in the systems that should be supporting them. (Bendo, 2021)

There is a plethora of research available about the negative impacts the global pandemic has had on the mental health and well-being of children and youth in Canada and abroad. Now, more than ever, our provinces children and youth need a child and youth advocate dedicated solely to advancing their rights and interests as we navigate the post-pandemic world.

Every day the staff at the OCYA work to ensure that the rights and interests of children and youth across our province are advanced and respected, and that they are provided with the high quality services they deserve. Children and youth are a unique and vulnerable population with specialized needs who deserve a dedicated, full-time Child and Youth Advocate to be their voice, independent of any political interests. Anything less would not be in the best interest of the children of this province and would run counter to the spirit and intent of the **UNCRC** and current trends.

UNICEF views the independence and influence of human rights institutions for children as defining features of their effectiveness including their capacity to investigate, report, convene, mediate, and influence lawmakers, government bodies, public institutions, and public opinion. Further, it is the ability to influence those with direct responsibility for policy and practice that distinguishes an effective institution. (Waldon, 2020)

The ability of the Child and Youth Advocate to release a report and make recommendations for improvement of programs, procedures, policies, and legislation without interference from outside sources, including members of the House of Assembly, is critical to preserve its independence and ensure that its actions are not susceptible to legislative pressure.

In conclusion, the Office of the Child and Youth Advocate is submitting that the **Child and Youth Advocate Act** and the mandate of this office should not be changed unless such changes are in the best interest of children and pass a Child Rights Impact Assessment. Further, any changes ought to expand and modernize the mandate of the OCYA in line with newer legislation in other Canadian provinces. Administrative efficiencies should not come at the cost of impacting the rights of vulnerable children and youth.

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