

Select Standing Committee on Children and Youth

# REVIEW OF THE *REPRESENTATIVE FOR CHILDREN AND YOUTH ACT*



LEGISLATIVE ASSEMBLY  
of BRITISH COLUMBIA

**FEBRUARY 2018**

THIRD SESSION  
OF THE 41<sup>ST</sup> PARLIAMENT



February 28, 2018

To the Honourable  
Legislative Assembly of the  
Province of British Columbia

Honourable Members:

I have the honour to present herewith the first report of the Select Standing Committee on Children and Youth for the Third Session of the 41st Parliament.

The Report covers the work of the Committee in regard to its review of the *Representative for Children and Youth Act* and was approved by the Committee.

Respectfully submitted on behalf of the Committee,

Nicholas Simons, MLA  
Chair

# Table of Contents

Composition of the Committee . . . . .	i
Terms of Reference . . . . .	ii
Executive Summary . . . . .	iii
Summary of Recommendations . . . . .	iv
Statutory Framework . . . . .	1
The Work of the Committee . . . . .	3
Part 1 - Interpretation . . . . .	5
Part 2 – Appointment of Representative . . . . .	7
Part 3 – Functions of Representative . . . . .	9
Part 4 - Reviews and Investigations of Critical Injuries and Deaths . . . . .	15
Part 5 – Administrative and General Provisions . . . . .	16
Other Matters . . . . .	18
Appendix A: Committee Meetings Schedule . . . . .	20
Appendix B: Contributors to the Committee’s Review . . . . .	21
Appendix C: May 2012 Statutory Review Report Recommendations . . . . .	22
Appendix D: <i>Representative for Children and Youth Act</i> . . . . .	23

# Composition of the Committee

## Members

Nicholas Simons, MLA	Chair	Powell River-Sunshine Coast
Michelle Stilwell, MLA	Deputy Chair	Parksville-Qualicum
Sonia Furstenau, MLA		Cowichan Valley
Rick Glumac, MLA		Port Moody-Coquitlam
Joan Isaacs, MLA		Coquitlam-Burke Mountain
Jennifer Rice, MLA		North Coast
Rachna Singh, MLA		Surrey-Green Timbers
Laurie Throness, MLA		Chilliwack-Kent
Teresa Wat, MLA		Richmond North Centre

## Committee Staff

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Alayna van Leeuwen, Committee Research Analyst

# Terms of Reference

On February 14, 2018, the Legislative Assembly agreed that the Select Standing Committee on Children and Youth be appointed to foster greater awareness and understanding among legislators and the public of the BC child welfare system, including the specific needs of indigenous children, youth, families and communities, and in particular to:

1. Receive and review the annual service plan from the Representative for Children and Youth (the "Representative") that includes a statement of goals and identifies specific objectives and performance measures that will be required to exercise the powers and perform the functions and duties of the Representative during the fiscal year;
2. Be the committee to which the Representative reports, at least annually;
3. Refer to the Representative for investigation the critical injury or death of a child;
4. Receive and consider all reports and plans transmitted by the Representative to the Speaker of the Legislative Assembly of British Columbia; and,
5. Pursuant to section 30(1) of the Representative for Children and Youth Act, S.B.C. 2006, c. 29 complete the comprehensive review of the Act or portions of the Act by February 28, 2018 to determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children and young adults as defined in that section are met.

In addition to the powers previously conferred upon Select Standing Committees of the House, the Select Standing Committee on Children and Youth be empowered:

- a. to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the committee and to delegate to the subcommittee all or any of its powers except the power to report directly to the House;
- b. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c. to conduct consultations by any means the committee considers appropriate;
- d. to adjourn from place to place as may be convenient; and
- e. to retain personnel as required to assist the committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

# Executive Summary

In accordance with section 30 of the *Representative for Children and Youth Act*, the Select Standing Committee on Children and Youth undertook a statutory review of the Act. The Act required the Committee to initiate the review prior to April 1, 2017. The Committee commenced initial work on the review during the 40th Parliament, prior to the provincial general election held on May 9, 2017. The Committee held some initial briefings with expert witnesses and invited written submissions from individuals and organizations.

Following the provincial general election, the opening of the 41st Parliament, and the appointment of the Committee in October 2017, the Committee continued its work on the statutory review. The Committee's first Terms of Reference in the new Parliament (received on October 23, 2017) provided a deadline of February 28, 2018 to complete the statutory review.

The Office of the Representative for Children and Youth briefed the Committee on the Representative's recommended changes to the Act on December 7, 2017. Additionally, on February 15, 2018, Mary Ellen Turpel-Lafond, the first person appointed as Representative for Children and Youth, shared her perspectives on the Act with the Committee.

Committee Members are grateful for the input from the individuals and organizations who contributed to the Committee's statutory review.

In conducting the statutory review, the Committee found that the Act is working well to support the Representative for Children and Youth's role as envisioned by the Hon. E.N. (Ted) Hughes in his 2006 report. Submissions received by the Committee generally indicated a high level of support for the mandate and functions of the Office of the Representative for Children and Youth. It is clear that the Office of the Representative for Children and Youth is valued as an integral element of the child and youth-serving system in BC.

The Committee's recommendations are centred on further enhancing the role of the Representative with respect to young adults who have previously been in care, and making some targeted clarifications and improvements to the Act.

# Summary of Recommendations

The Committee recommends to the Legislative Assembly that:

## Part 1 – Interpretation

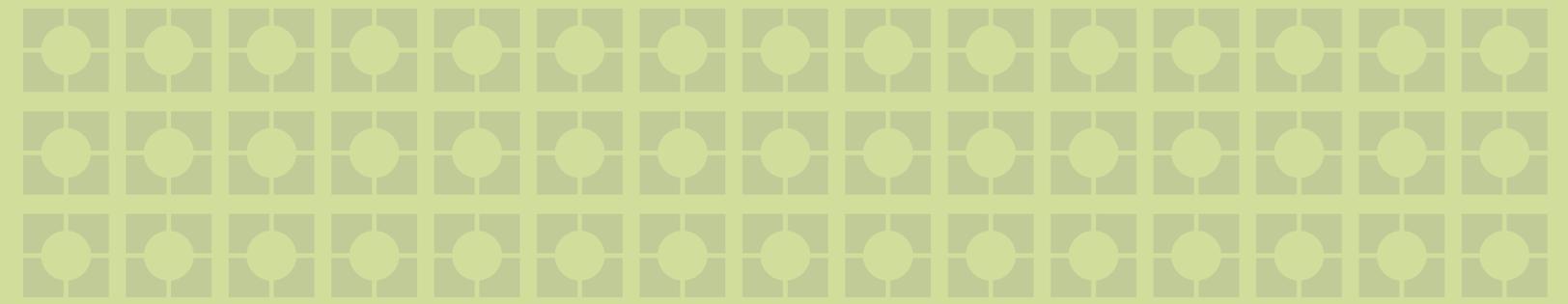
1. The Act's definition of designated services be amended to include services or programs provided or funded by government for children with special needs.

## Part 2 – Appointment of Representative

2. A review of statutory officers' terms of employment be undertaken by the Legislative Assembly. The review should include appointment and remuneration, with a view to determining whether more standardized terms of employment would enhance independence, transparency and accountability. Such a review could include consideration of principles such as whether or not statutory officers' terms should be renewable.

## Part 3 – Functions of Representative

3. The Act be amended to allow the Representative for Children and Youth to support, assist, inform and advise young adults who have previously been in care with respect to services and programs necessary to support them in their transition to adulthood.
4. The Act be amended to ensure the Representative has authority to provide advocacy services with respect to programs and services for young adults with special needs that were formerly delivered under the *Community Living Authority Act*. Further, amendments to the Act should ensure that the Representative's existing mandate with respect to young adults with special needs is expanded in conjunction with the recommendations related to young adults who have previously been in care.
5. Section 6(1)(b) of the Act be amended to authorize the Representative to monitor, review, audit and conduct research in respect of prescribed services and reviews by the director under the *Child, Family and Community Service Act*.
6. The Act be amended to define a young adult as a person aged 19 years of age but under age 26, to align with the eligibility for agreements with adults under section 12.3 of the *Child, Family and Community Service Act*, and remove the requirement that a young adult is required to have received a reviewable service within the 15 months before the individual's 19th birthday.



## **Part 4 - Reviews and Investigations of Critical Injuries and Deaths**

7. The Act be amended to provide that, where the Representative is investigating a critical injury to a child, the investigation may include events and incidents that occurred after the child reached 19 years of age, where the Representative believes that such investigation raises important issues related to the conduct of a public body delivering a reviewable service.

## **Part 5 – Administrative and General Provisions**

8. Section 30 of the Act be amended to remove the reference to determining whether the functions of the Representative are still required, and to state that the Committee will undertake a comprehensive review, or review of portions of the Act, every five years to ensure the Act is functioning effectively to meet the needs of children and young adults.

## **Other Matters**

9. The Act be amended to require that, in undertaking the functions under the Act, the Representative reflect the principles contained in the United Nations Convention on the Rights of the Child.

# Statutory Framework

## Origins and key elements of the Act

The *Representative for Children and Youth Act* was unanimously adopted by the Legislative Assembly in 2006. The Act implemented the recommendations of the 2006 *BC Children and Youth Review: An Independent Review of BC's Child Protection System* related to the establishment of a new external oversight plan for the province's child and youth system. The Hon. E.N. (Ted) Hughes recommended that a new statutory officer, the independent Representative for Children and Youth, have a three-fold mandate:

- advocacy for children and their families with respect to designated services specified under the Act;
- monitoring, reviewing and auditing the provision of designated services to children and their families; and
- reviewing, investigating and reporting on critical injuries and deaths of children who had been in care, or had received certain services in the preceding year, where there is a connection to the child serving system.

Reports by the Representative are provided to the Speaker for tabling in the Legislative Assembly and referred for review to the Select Standing Committee on Children and Youth.

In establishing the Representative for Children and Youth as a statutory officer, the Act provides that the Representative is appointed by the Legislative Assembly following the unanimous recommendation of an all-party special committee of the Assembly.

In November 2006, the Legislative Assembly unanimously agreed to appoint Mary Ellen Turpel-Lafond as the province's first Representative. In 2011, she was re-appointed for a second and final term, which ended on November 27, 2016.

On February 16, 2017, the Legislative Assembly unanimously appointed Bernard Richard as Representative for Children and Youth, following his service as Acting Representative after the end of Ms. Turpel-Lafond's second term.

## Statutory reviews under the Act

Section 30 of the Act requires the Select Standing Committee on Children and Youth to review the Act every five years to "determine whether the functions of the Representative ... are still required to ensure the needs of children ... are met."

In May 2012, the Select Standing Committee on Children and Youth released its report on the first statutory review of the Act. Following public consultations and meetings with key stakeholders, the Committee made seven recommendations to enhance the legislation. Legislation to implement the Committee's

recommendations was adopted by the Legislative Assembly in March 2013, and a corresponding change to the regulation under the Act was also approved by the Lieutenant Governor in Council in 2013. A list of the Committee's 2012 recommendations is in Appendix C.

One of the Committee's 2012 recommendations was to amend the Act to require a review of the Representative's monitoring functions described in section 6(1)(b) by April 1, 2015. Accordingly, in March 2015, the Committee considered this matter, and recommended that the Act's provision establishing the Representative's monitoring function, "not be amended at this time," noting that, "there will be an opportunity to review this section during the next statutory review of the Act."

The Committee's report reflected the position set out in a joint letter from the Ministry of Children and Family Development and the Representative describing their shared view "that the Representative's monitoring functions...remain a required and important aspect of oversight and public accountability of the performance and outcomes of the Ministry of Children and Family Development," and that they shared the view that despite progress by the Ministry in improving performance measurement and reporting, "considerable work is required to achieve the performance and outcomes reporting envisioned by the Honourable Ted Hughes in his April 2006 BC Children and Youth Review."

# The Work of the Committee

On February 14, 2018, the Legislative Assembly issued the Committee's Terms of Reference which included a provision requiring the Committee to continue and complete its "comprehensive review of the Act, or portions of the Act, by February 28, 2018 to determine whether the functions of the Representative described in section 6 are still required to ensure that the needs of children and young adults as defined in that section are met."

## Consultation Process

Section 30 of the Act required the Committee to begin the statutory review by April 1, 2017. The Committee commenced work on the statutory review on September 26, 2016 (during the previous Parliament). On October 24, 2016, with just over one month left in her final term, the then-Representative for Children and Youth, Mary Ellen Turpel-Lafond, gave a brief preliminary overview of possible areas for improvement in the Act. She noted that staff in her Office were preparing a detailed written submission that would be provided to the Committee under the leadership of the next person to be appointed as Representative.

The Committee accepted written submissions from individuals and organizations between December 16, 2016 and February 10, 2017, receiving 16 submissions by the close of public consultations. In addition to a general call for submissions, nearly 60 organizations and individuals were directly contacted via email to advise them of the statutory review and the opportunity to make a submission. The Committee also used Legislative Assembly social media platforms to promote awareness and participation, and to provide updates on the Committee's work. (See Appendix B for the names of individuals and organizations who made a submission.)

The Hon. E.N. (Ted) Hughes, author of the 2006 *BC Children and Youth Review: An Independent Review of BC's Child Protection System* appeared before the Committee on January 12, 2017. Hon. Hughes focused his remarks on the intent behind the monitor, review, audit and research function under section 6(1)(b) of the Act, and how that function has evolved relative to the Ministry of Children and Family Development's quality assurance and public reporting role. The Ministry of Justice and Attorney General (which later became the Ministry of Attorney General) provided a written submission presenting expert perspectives on the Act, as well as appearing before the Committee to discuss the Ministry's submission and answer questions from the Committee on February 22, 2017.

## Additional Briefings and Deliberations

In resuming the statutory review in the new Parliament, the Committee considered the results of public consultations held in the previous Parliament. The Committee also received a presentation from the Representative for Children and Youth, Mr. Bernard Richard, on December 7, 2018, highlighting key recommendations in the Office of the Representative for Children and Youth's detailed written submission.

The former Representative for Children and Youth, Mary Ellen Turpel-Lafond, appeared before the Committee on February 15, 2018, to provide her perspective on potential enhancements to the Act.

The Committee completed its deliberations on February 21, 2018 by agreeing on conclusions and recommendations to strengthen and update the provisions of the Act. A schedule of Committee meetings is provided in Appendix A.

Committee Members expressed their appreciation for the presentations and submissions received from individual British Columbians, community stakeholders, the Office of the Representative for Children and Youth, and officials of the Ministry of Attorney General. Their evidence provided substantive and valuable input into the Committee's deliberations on the Representative's role and functions in serving the province's children and youth.

Transcripts and materials related to the Committee's proceedings and this report are available on the Committee's website at: <https://www.leg.bc.ca/parliamentary-business/committees/cay>

# Part 1 - Interpretation

Part 1 of the Act sets out definitions of various terms used in the legislation. Some of the definitions are crucial for establishing the scope of the Representative's functions under section 6 of the Act.

## Definition – designated services

The scope of two of the Representative's functions (advocacy for children and their families, and monitoring the provision of designated services) is established based on the list of services and programs for children and their families defined as designated services.

The written submission from the Office of the Representative for Children and Youth stated that "jurisdiction in respect of services to children with special needs should be clarified by amending the definition of 'designated services' and adding ... 'services or programs provided or funded by government for children with special needs.'"

The Representative's December 7, 2017 presentation to the Committee explained that the concern regarding children with special needs was due in part to a legislative gap which had arisen since the Act was adopted. He said that when "the Act was first enacted, the clear intent was for the Representative to be able to advocate for and monitor all services delivered to children and youth with special needs," which were at that time delivered through Community Living BC. He said that some services were transferred from Community Living BC to the Ministry of Children and Family Development, and that in 2015, a further program reorganization transferred nursing support services to the Ministry of Health. He emphasized that "if a service is not a designated service, the Representative has no statutory authority to exercise its advocacy and monitoring functions."

Understanding that the request from the Office of the Representative for Children and Youth is to re-establish the previously-existing mandate in relation to services for children with special needs, the Committee agreed that this legislative gap should be addressed.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

1. The Act's definition of designated services be amended to include services or programs provided or funded by government for children with special needs.

## Definitions – other issues

The Ministry of Attorney General's submission suggested that the way the Act defines designated and reviewable services, and incorporates some additional programs and services under the Act's regulation as prescribed services, could be clarified.

Committee Members identified an opportunity to simplify the Act's existing approach to defining services that are within the Representative's mandate. As part of the statutory review, the Committee noted two specific issues where program delivery changes led to inadvertent "gaps" in the Representative's authority to provide advocacy services.

A simplified approach to defining services under the Representative's mandate might help reduce the possibility of inadvertent gaps in authority in the future. Given that the Act's current approach to young adults is unclear, re-thinking how services are defined would be especially beneficial if the Committee's recommendations regarding young adults are implemented.

# Part 2 – Appointment of Representative

Part 2 of the Act sets out the process for appointing a Representative, the Representative's term and remuneration, the resignation, removal, or suspension of the Representative, and the appointment of an Acting Representative.

## Section 2(3) - Appointment of Representative for Children and Youth

Section 2(3) stipulates that the Representative must be appointed for a term of five years and may be reappointed for one further five year term.

The Act mirrors the recommendation of the Hughes report for, "a five year term, renewable to a maximum of 10 years." The term for the province's other statutory officers includes a three year term with provision for unlimited renewals, and an eight year non-renewable term. Child and youth representatives/advocates in other jurisdictions have terms ranging from British Columbia's approach of a five year term with provision for one renewal (Ontario, Manitoba, and Nunavut), a six year term with provision for one renewal (Newfoundland and Labrador), to a seven year non-renewable term.

The Office of the Representative for Children and Youth's written submission proposed that the Act be amended to provide a single, non-renewable eight year term of office in order to "maintain the independence and vigilance required" of an independent officer of the legislature.

## Section 3 – Remuneration

Section 3(2) provides that the public service plan in the *Public Sector Pension Plans Act* applies to the Representative.

The Hughes report did not specify a pension arrangement for the Representative. The Act's pension provision is consistent with that of the Auditor General and the Police Complaint Commissioner, as well as senior public servants such as Deputy Ministers, who receive one year of pensionable service for each year of service. On the other hand, older legislation for the Chief Electoral Officer, the Information and Privacy Commissioner, and the Ombudsperson provides that each year of service counts as 1.5 years of pensionable service. Remuneration for the Conflict of Interest Commissioner and the Merit Commissioner (a part-time position) is set by Order in Council.

In conjunction with the proposal for a longer, non-renewable term of office, the written submission from the Office of the Representative for Children and Youth recommended that pension benefits received by the Representative should be "harmonized with those of some other Officers of the Legislature." The submission stated that "if such changes were enacted, that the change should not be brought into force until the expiration of the term of office of the current Representative."

In order to advance consideration of the Act's term and pension provisions, the Representative, in his December 7, 2017 presentation, stated that:

*"I really think the time has come for British Columbia legislators to consider bringing in more uniform measures for recruiting legislative officers ... some officers are eligible for better pension provisions than others, which is a bit surprising for me because we all have about the same responsibilities and duties in terms of reporting to the Legislature."*

The Representative's call for a review of statutory office appointment and remuneration provisions is consistent with the statement in the December 2016 *Annual Review of the Budgets of Statutory Offices*, the report of the Select Standing Committee on Finance and Government Services, that:

*"Statutory officers ... were operating in different statutory frameworks containing a variety of appointment mechanisms, reporting arrangements, and remuneration provisions. In due course, the Legislative Assembly may wish to request that the Committee review and make recommendations on statutory officer appointment mechanisms, reporting arrangements, and compensation benefits with a view to providing greater consistency for these provisions."*

In considering the recommendation on the length of term of office, Committee Members noted that the Act reflects the recommendation of the Hughes report for a five year term, which is renewable for a second term, resulting in a maximum term of 10 years. Currently only one of BC's eight statutory officers is limited to a single term. Members considered that a single, longer term could be seen to support the independence of statutory officers, but, on the other hand, a shorter, renewable term could serve to attract candidates and promote accountability of the office holder. Members also took note of differing pension provisions for the province's statutory officers.

Committee Members concluded that a review of the principles and appointment and remuneration provisions of the Representative and other statutory officers should be carried out to support greater consistency of terms of employment amongst these important and unique positions.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

2. A review of statutory officers' terms of employment be undertaken by the Legislative Assembly. The review should include appointment and remuneration, with a view to determining whether more standardized terms of employment would enhance independence, transparency and accountability. Such a review could include consideration of principles such as whether or not statutory officers' terms should be renewable.

# Part 3 – Functions of Representative

Part 3 describes the functions and general powers of the Representative, including the three main components of the Representative's mandate under section 6:

- advocacy for children and their families with respect to designated services as defined in the Act, and advocacy for young adults and their families with respect to prescribed services specified under the regulation;
- monitoring, reviewing and auditing the provision of designated services to children and their families; and
- reviewing, investigating and reporting on critical injuries and deaths of children under circumstances specified in the Act, such as where a reviewable service, or the policies or practices of a public body, may have contributed to the critical injury or death.

Other sections under Part 3 provide for the Representative's powers in relation to hiring staff and delegating powers and duties to staff; prohibit the Representative from acting as legal counsel; and establish the Representative's right to information in the custody or control of public bodies.

## Section 6(1)(a) and Section 6(1)(a.1)

### Establishing a new advocacy mandate with respect to young adults previously in care

Section 6(1)(a) authorizes the Representative to "support, assist, inform and advise children and their families respecting designated services." Section 6(1)(a.1) provides that the Representative has the authority to "support, assist, inform and advise young adults and their families respecting prescribed services and programs." "Prescribed services" refer to those set out in the regulation under the Act.

The functions under section 6(1)(a) and 6(1)(a.1) are commonly referred to as the Representative's "advocacy" function.

Under section 6(1)(a.1), the Representative's advocacy function with respect to young adults is currently limited to young adults between 19 and up to age 24 who are receiving (or are eligible to receive) community living support under the *Community Living Authority Act* – the only service prescribed under the *Representative for Children and Youth Act's* regulation (BC Reg 103/2007).

The Committee received a number of written submissions suggesting that the Representative have an expanded mandate in relation to young adults, specifically focusing on young adults who have "aged out" of care. For example, the Children's Health Foundation of Vancouver Island recommended the Representative be able to "clearly and fastidiously support young adults as they transition to adulthood." Similarly, the Vancouver Foundation, First Call, the BC Government and Service Employees Union (BCGEU) and the Federation of Community Social Services all suggested the Representative should have a mandate to assist young adults previously in care, aligned with the age criteria for Agreements with Young Adults (a program for young people previously in care between the ages of 19 and up to age 26).

The Office of the Representative for Children and Youth's written submission recommended that the advocacy function be extended to include young adults who have previously been in care, and identified a number of specific services related to support for such young adults: specialized health services and programs (including mental health and addiction services); access to post-secondary education and tuition subsidies; access to income assistance, disability benefits and housing supports; and services provided to young adults under the *Child, Family and Community Service Act*, such as the Agreements with Young Adults program.

The Committee agreed that young adults who have been in care could benefit from the Representative's assistance as they seek to connect with programs and services intended to assist them with their transition into adulthood. In considering the list of suggested services in the recommendation from the Office of the Representative for Children and Youth, Committee Members agreed that the categories of services should be carefully defined so that the Representative's mandate does not inadvertently exclude young adults who would benefit from support in accessing services they need for a successful transition into adulthood. At the same time, the Representative's mandate should focus on the services and programs most likely to be relevant and necessary to the needs of young adults who have been in care in order to avoid duplication or conflict with the mandates of other program oversight and advocacy bodies. The Representative should be consulted on draft legislation to implement the expanded mandate.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

3. The Act be amended to allow the Representative for Children and Youth to support, assist, inform and advise young adults who have previously been in care with respect to services and programs necessary to support them in their transition to adulthood.

## Section 6(1)(a.1)

### Enhancing the Representative's mandate with respect to young adults with special needs

Section 6(1)(a.1) enables the Representative to provide advocacy services to young adults and their families with respect to prescribed services and programs. The section was added to the Act in 2013 as part of implementing the Committee's 2012 recommendation that the Representative be able to advocate for young adults transitioning into the system of community living support services provided for adults with developmental disabilities.

The Office of the Representative for Children and Youth's written submission raised two issues with respect to the Representative's mandate in relation to young adults with special needs.

First, the submission noted that an "advocacy gap" has arisen as a result of recent program delivery changes, resulting in some key services for adults with developmental disabilities no longer being delivered under the *Community Living Authority Act*. As such, the regulation's reference to "community living under the *Community Living Authority Act*" excludes some services which the Office was previously able to assist young adults with special needs in accessing. The Representative noted that it would be possible to address this issue with either a change to the regulation, or an amendment to the Act.

The second element of the recommendation was to allow the Representative to advocate for young adults with special needs in relation to a broader suite of programs and services. The submission identified specialized health services and programs (including mental health and addiction services), access to post-secondary education and tuition subsidies, and access to income assistance, disability benefits and housing supports.

Committee Members agreed with addressing the issue resulting from some services for young adults with special needs being moved outside of the *Community Living Authority Act*.

The Committee supported the Representative's proposal to allow the Representative to advocate for young adults with special needs in relation to programs and services beyond only community living support. Members agreed that there should be consistency in the Representative's ability to provide advocacy for both young adults with special needs and young adults who have previously been in care. They concluded that the implications for the Representative's advocacy case load should be modest as the intent is to allow the Representative to assist young adults with special needs to access a broader suite of services. Members also noted that Community Living BC is striving to facilitate a smoother transition to the adult-serving system by connecting with youths and their families before they reach age 19, which may ultimately reduce requests to the Representative's Office to help with the transition.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

4. The Act be amended to ensure the Representative has authority to provide advocacy services with respect to programs and services for young adults with special needs that were formerly delivered under the *Community Living Authority Act*. Further, amendments to the Act should ensure that the Representative's existing mandate with respect to young adults with special needs is expanded in conjunction with the recommendations related to young adults who have previously been in care.

## Section 6(1)(b)

Section 6(1)(b) establishes the Representative's authority to monitor, review, audit, and conduct research on the provision of designated services in order to make recommendations for improvement.

### Previous examinations of section 6(1)(b)

This provision is based on Hon. Hughes' recommendation in his 2006 *BC Children and Youth Review* wherein he stated that independent oversight of the child welfare system was necessary to establish public confidence in the system. He further suggested that perhaps in the future, the Ministry of Children and Family Development's performance measurement system, quality assurance programs, and public reporting may be sufficient to assure British Columbians that vulnerable children and youth are being protected.

During the Committee's 2012 statutory review, the Ministry of Children and Family Development advised that the Ministry's performance measurement and public reporting should be sufficiently improved in three years' time such that the Committee could assess the Ministry's progress and consider removal of the monitoring

and auditing elements of section 6(1)(b). The Ministry had proposed maintaining the Representative's research function under section 6(1)(b). The Committee's 2012 statutory review report recommended that the Committee complete a review of the Representative's monitoring functions described in section 6(1)(b) by April 1, 2015.

The Committee's 2015 statutory review focused strictly on section 6(1)(b). The Committee received a joint letter from the Ministry of Children and Family Development and the Representative describing their shared view "that the Representative's monitoring functions...remain a required and important aspect of oversight and public accountability of the performance and outcomes of the Ministry of Children and Family Development." The Committee recommended no change to section 6(1)(b), and noted the opportunity to consider the section during the review of the Act required to be initiated before April 1, 2017.

### **Current statutory review and views on the role of section 6(1)(b) within the Act**

The January 12, 2017 presentation by Hon. Hughes noted that two previous statutory reviews by the Committee determined the Representative's monitoring function should remain in the Act. Hon. Hughes further stated:

*I think it's an appropriate time to make the decision of what is going to happen with that section that I said ten years ago might only have to be in place for a limited period of time. There's no question about the importance of the advocacy function of the Representative's office. It has been so ably handled and is now in capable hands to carry forward, as well as the review and reporting on critical injuries and deaths of children in care.*

*It remains this other question of the monitoring role, which is the one that I suggested might be provisional because of its unusualness. [...] The placement, at the time, of the monitoring provision was necessary then. Whether it is now, I don't know, but I think you've got to figure that out. You either get a plan and follow through with the plan with the assistance of the new Representative or decide that it's going to stay as a permanent feature of the Act and not spend any more time on it.*

The Office of the Representative for Children and Youth's written submission suggested that, "without diminishing the importance of ... Ministry internal quality-assurance processes, the time has come to consider whether the monitoring function should be an enduring safeguard to effective quality assurance, one which benefits both the Ministry and the needs of children and families."

None of the submissions received by the Committee suggested phasing out the Representative's monitoring function. Rather, submissions from stakeholders and citizens supported the maintenance of such oversight as necessary and valuable. For example, the Federation of Community Social Services said "monitoring of the child welfare system must be independent from the political arm of government to be accountable to the public," and First Call suggested that "ministerial direction, duties of employer loyalty, inadequate resources and other impediments" result in the Ministry of Children and Family Development being unable to satisfactorily fulfill the role of monitoring the provision of services to children and youth.

The Committee is of the view that section 6(1)(b) remains a relevant and important feature of the Act. The Ministry of Children and Family Development is a critically important public body responsible for service delivery to some of BC's most vulnerable children and youth. As such, it is essential that the Ministry continue making positive progress in quality assurance, performance measurement and public reporting. However, the Representative's mandate to monitor, review, audit and conduct research remains a valuable source of

independent information with regard to how well public bodies are serving our children and youth. The Representative is uniquely positioned to examine these services and recommend systemic improvement.

### **Suggestions for changes or additions to section 6(1)(b)**

In addition to commentary on the general role of section 6(1)(b) within the Act, the Committee received some suggestions for specific changes to section 6(1)(b).

The Ministry of Attorney General's written submission pointed to, "internal inconsistency in the definition of designated services," and suggested that "it is unclear whether the Representative's function in section 6(1)(b) includes services to young adults under the *Community Living Authority Act*." The Ministry also suggested that the Representative does not have authority to review a director's review conducted under the *Child, Family and Community Service Act* because a director's review is not a service or program for children and their families as set out in the *Representative for Children and Youth Act's* definition of "designated services."

The submission from the Office of the Representative for Children and Youth proposed amending section 6(1)(b) to authorize the Representative to monitor, review, audit and conduct research in respect of prescribed services, special education, the government's poverty strategy and director's reviews under the *Child, Family and Community Service Act*.

With regard to the proposed additions and clarifications to the scope of the Representative's authority under section 6(1)(b), Committee Members agreed that it would be a modest change to clarify that prescribed services may be subject to the Representative's monitoring authority under section 6(1)(b).

The Committee discussed that it is important for the Ministry of Children and Family Development to retain responsibility and accountability for director's reviews as an internal quality assurance function. The Members agreed, however, that the Representative should have authority to assess and comment on the quality of the reviews and how effectively those internal processes contribute to improvements in service delivery.

## **RECOMMENDATION**

The Committee recommends to the Legislative Assembly that

5. Section 6(1)(b) of the Act be amended to authorize the Representative to monitor, review, audit and conduct research in respect of prescribed services under the Act and reviews by the director under the *Child, Family and Community Service Act*.

## **Section 6(2)**

Section 6(2) provides that for the purposes of section 6, a young adult is someone 19 years of age or older, up to the age of 24, who has received a reviewable service in the 15 months before turning 19.

The submission from the Office of the Representative for Children and Youth proposed a young adult be defined as a person aged 19 and up to age 26 (instead of up to age 24) to align with some program changes made by the government to better serve youth transitioning out of care. For example, the government recently expanded the age limit for Agreements with Young Adults up to the age of 26.

A further change to the definition of young adult requested by the Representative suggested that the condition requiring a person to have received a reviewable service in the 15 months before the person's 19th birthday is too restrictive – currently, the condition limits the Representative from assisting young people with special needs who have not received a reviewable service (relying instead on the family's own resources and special education services), but need assistance obtaining community living support services when the young person reaches age 19. Additionally, in relation to the recommendation to establish a new mandate to advocate for young adults who have previously been in care, the Representative suggested the reviewable services condition would be overly restrictive – as an example, the Office would not be able to assist a young person who lived in care up to age 17, but then received no reviewable services in the two years prior to turning 19.

The Committee agreed that young adult should be defined in a similar way as in other key programs for young adults who have previously been in care, and that the requirement to have received a reviewable service within the 15 months prior to turning 19 is unduly limiting.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

6. The Act be amended to define a young adult as a person aged 19 years of age but under age 26, to align with the eligibility for agreements with adults under section 12.3 of the *Child, Family and Community Service Act*, and remove the requirement that a young adult is required to have received a reviewable service within the 15 months before the individual's 19th birthday.

## Section 7 – Representative's Staff

Section 7 of the Act authorizes the Representative to appoint one or more Deputy Representatives. The specific qualifications of a Deputy Representative, including the types of experience an individual must have in order to be considered for appointment, are set out in the regulation under the Act.

While regulatory changes are beyond the scope of the Committee's mandate regarding the statutory review of the Act, the Ministry of Attorney General pointed to a potential issue with the qualifications of a Deputy Representative listed in the regulation. The regulation requires a Deputy Representative to have experience in one of the following four areas: working with children; experience respecting the provision of one or more designated services, as defined in the Act (or substantially similar experience); experience investigating the critical injuries or deaths of children; or experience in financial or business administration.

The Ministry advised that it may be possible to have a Deputy Representative with experience only in financial or business administration, i.e., one of the four types of experience listed, which may not be desirable. The Representative agreed with the Ministry's proposal to clarify the qualifications for a Deputy Representative.

Committee Members supported the rationale for clarifying the regulatory qualifications for the experience of a Deputy Representative, as outlined by the Ministry of Attorney General and the Representative.

# Part 4 - Reviews and Investigations of Critical Injuries and Deaths

Part 4 of the Act empowers the Representative to review and investigate critical injuries and deaths involving a child. The Act provides that a critical injury or death of a child who was receiving, or whose family was receiving, a reviewable service must be reported by a public body to the Representative for review. After the completion of a review, the Representative may initiate investigation, if it is determined that the critical injury or death involved service delivery issues, unusual or suspicious circumstances, or was self-inflicted or inflicted by another individual.

## Section 12 – Investigations of Critical Injuries and Deaths

Section 12 provides that the Representative may investigate a critical injury or death of a child. The Act defines a child as a person up to the age of 19.

The Ministry of Attorney General's written submission asked whether the Act should be clarified such that events that occurred after a person's 19th birthday are not within in the Representative's investigation and reporting scope. The Representative did not agree with the Ministry's suggestion, and recommended that the Act should instead be amended to establish that when the Representative has commenced an investigation into a critical injury of a child, the Representative has authority to include events (such as further critical injuries, or death) that occur after the person who is subject of the investigation has turned 19.

Committee Members concluded that Office of the Representative for Children and Youth's proposal would not expand the Office's scope to investigate critical injuries and deaths of young adults in a broad way. Instead, the intent is to allow the Representative discretion to include events that the Representative feels are relevant to a critical injury investigation as long as the initial investigation began while the person was under the age of 19.

### RECOMMENDATION

The Committee recommends to the Legislative Assembly that

7. The Act be amended to provide that, where the Representative is investigating a critical injury to a child, the investigation may include events and incidents that occurred after the child reached 19 years of age, where the Representative believes that such investigation raises important issues related to the conduct of a public body delivering a reviewable service.

# Part 5 – Administrative and General Provisions

## Section 26 – Communication by Child

Section 26 provides that if a child in a foster home, group home, facility, or other place in which a designated service is provided asks to communicate with the Representative, the person in charge must immediately forward the request to the Representative, and if a child writes a letter to the Representative, the person in charge must forward the letter the Representative unopened.

The Committee received highly similar recommendations in submissions from First Call and the BCGEU, which proposed that the Act be amended to require care providers and those responsible for facilities where children and youth may be in care or detained, to “inform children and youth, in language suitable to their understanding, of the existence and role of the Representative, how to contact the Representative, and of their right to have private contact with the Representative without delay.”

The Committee considered section 70 of the *Child, Family and Community Service Act*, which provides that children in care have the right to privacy during discussions with individuals including a lawyer, Member of the Legislative Assembly or Member of Parliament, the Ombudsperson, and the Representative or an employee of the Representative’s office, and states that they have a right to be informed about and assisted in contacting the Representative or the Ombudsperson. Members were concerned by an example from one Member’s community where a child in care reported having information about the Office of the Representative for Children and Youth removed from the child’s possession.

The Committee agreed that it is essential for children and youth to be aware of their rights, including the right to contact the Representative.

In discussing how children and youth might have their right to assistance from the Representative promoted and protected, Committee Members determined that the Act should not duplicate section 70 of the *Child, Family and Community Service Act*. However, the Committee urges that children’s rights under section 70 must be meaningfully upheld. Committee Members emphasize that social workers and care providers are responsible for meeting the needs of children and youth in care in a way that respects their rights, which includes making children and youth aware of their right to independent advocacy from the Representative.

## Section 30 – Review of the Act

Section 30 provides that “to determine whether the functions of the Representative described in section 6 are still required to ensure that the needs of children, and young adults as defined in that section, are met” the Committee must undertake a review “before April 1, 2017, and at least once every five years after that.” As a result, the next statutory review would need to begin no later than April 1, 2022.

The Office of the Representative for Children and Youth’s written submission proposed that a statutory review be carried out once every seven years, given the time and resources required to prepare contributions (such as written submissions) to statutory reviews.

Of the submissions that commented on the issue, support for periodic statutory reviews was evident, though some suggested that section 30's language should be broader. Noting their "concern that section 30 ... has the potential to serve as a sunset provision for some of the Representative's powers," UNICEF Canada suggested the Act be reviewed every five years, "without requiring an examination of the continuing need for any or all of the Representative's legislated functions." The BC Association of Social Workers said that the Act "needs to be clear regarding permanence" of the Office of the Representative for Children and Youth; similarly, First Call said that section 30 should be repealed and replaced with a requirement to "periodically review the Act in its entirety to assess how well it is supporting the work that needs to be done to promote and protect the rights of BC's children and youth."

Committee Members concluded that statutory reviews conducted every five years remain an important responsibility for the Committee, and help ensure that the Act responds to evolving issues in services for children and youth.

Members felt that in undertaking a comprehensive statutory review, the Committee has the discretion to consider and evaluate the Representative's mandate and functions in detail; as such, it would be appropriate to remove the specific direction under section 30 to consider if the functions are "still required."

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

8. Section 30 of the Act be amended to remove the reference to determining whether the functions of the Representative under section 6 are still required, and to state that the Committee will undertake a comprehensive review, or review of portions of the Act, every five years to ensure the Act is functioning effectively to meet the needs of children and young adults.

# Other Matters

The Act does not currently contain any reference to the United Nations Convention on the Rights of the Child (UN Convention), or any other interpretive principles.

The written submission from the Office of the Representative for Children and Youth recommended that the Convention be referenced in the Act. In his December 7, 2017 presentation, the Representative said, “we do our best to operate within the ambit of the Convention ... It guides our work already.” Other stakeholders, including UNICEF Canada and First Call, also suggested that explicit reference to the UN Convention should be included in the Act. The former Representative for Children and Youth, Mary Ellen Turpel-Lafond also suggested in her presentation to the Committee that consideration be given to promoting a child and youth-rights lens in the Act.

The federal government, on behalf of Canada and with the support of the provinces and territories, ratified the UN Convention on the Rights of the Child in 1991. Canada’s position on implementing international instruments such as the UN Convention is that it is generally not necessary to adopt a specific piece of legislation to implement an international agreement. Ratification and implementation typically involves examining existing and proposed domestic laws – including those of the provinces and territories, when the subject matter is in their jurisdiction – to assess whether the laws are consistent with the international agreement.

Committee Members did not come to a unanimous recommendation on the issue of whether the UN Convention should be referenced in the Act. Some Members wanted to more fully explore the legal implications before coming to a decision on the issue, particularly given the breadth of the subject matters in the UN Convention. Some Members observed that the UN Convention already informs how the Office of the Representative for Children and Youth approaches its work, and a reference to the UN Convention in the Act may be unnecessary. Additional objections included the possibility of overemphasizing international human rights agreements relative to the goal of child protection.

Other Members noted that several similar Acts in other provinces and territories reference the UN Convention as an interpretive guide for the work of their independent child and youth representatives. Some Members argued that international standards for human rights are compatible with, and reinforce, the goal of an effective child welfare system. Given that the UN Convention is the most-ratified of all international conventions, some Members considered it to represent an international consensus that is worth reflecting in the legislation.

On division, a majority of Members determined that to assist in promoting a focus on the needs and interests of children and youth, the *Representative for Children and Youth Act* should refer to the UN Convention.

## RECOMMENDATION

The Committee recommends to the Legislative Assembly that

9. The Act be amended to require that, in undertaking the functions under the Act, the Representative reflect the principles contained in the United Nations Convention on the Rights of the Child.

# Appendix A: Committee Meetings Schedule

## 41st Parliament

Date	Type	Location
October 25, 2017	Organization and planning	Victoria
December 7, 2017	Briefing	Vancouver and Victoria (videoconference)
January 26, 2018	Deliberations	Vancouver
January 30, 2018	Deliberations	Vancouver
February 15, 2018	Briefing and deliberations	Victoria
February 21, 2018	Deliberations and adoption of report	Victoria

## 40th Parliament

Date	Type	Location
September 26, 2016	Organization and planning	Victoria
October 24, 2016	Briefing	Victoria
January 12, 2017	Briefing	Victoria
February 22, 2017	Briefing	Victoria

Committee Members at the dissolution of the 40th Parliament were: Jane Thornthwaite, (Chair), MLA North Vancouver-Seymour; Melanie Mark, (Deputy Chair) MLA, Vancouver-Mount Pleasant; Marc Dalton, MLA, Maple Ridge-Mission; Carole James, MLA, Victoria-Beacon Hill; Maurine Karagianis, MLA, Esquimalt-Royal Roads; John Martin, MLA, Chilliwack; Don McRae, MLA, Comox Valley; Dr. Darryl Plecas, MLA, Abbotsford South; Linda Reimer, MLA, Port Moody-Coquitlam; Jennifer Rice, MLA, North Coast

# Appendix B: Contributors to the Committee's Review

## Individuals and Organizations Making Written Submissions

BC Association of Social Workers

BC Civil Liberties Association

BC Government and Service Employees' Union (BCGEU)

Carrier Sekani Family Services

Children's Health Foundation of Vancouver Island

BC Coroners Service, Ministry of Public Safety and Solicitor General, Province of British Columbia

Federation of Community Social Services of BC

First Call: BC Child and Youth Advocacy Coalition

MacLean, Rosalind

Ministry of Justice and Attorney General, Province of British Columbia

Morin, Lloyd

Muskee, Jennifer

Office of the Representative for Children and Youth

Public Guardian and Trustee of British Columbia

UNICEF Canada

Vancouver Foundation

Victoria Family Court and Youth Justice Committee

West Coast Legal Education and Action Fund

## Individuals Appearing Before the Committee

Mary Ellen Turpel-Lafond (Representative for Children and Youth until November 27, 2016), October 24, 2016

Hon. E.N. (Ted) Hughes, January 12, 2017

Deputy Minister Richard Fyfe, Ministry of Justice and Attorney General, February 22, 2017

Bernard Richard, Representative for Children and Youth, December 7, 2017

Mary Ellen Turpel-Lafond, February 15, 2018

# Appendix C: May 2012 Statutory Review Report Recommendations

## Part 2 – Appointment of Representative

1. Allow for the appointment by the Lieutenant Governor in Council of an acting Representative if the Representative is suspended, the office is vacant or the Representative is temporarily absent because of illness or another reason, and the House is dissolved and the Select Standing Committee on Children and Youth is not constituted.

## Part 3 – Representative's Functions and General Powers

2. Allow the Representative to provide advocacy services to young adults between 19 and 24 years of age who are transitioning into the Community Living BC system and/or have received a reviewable service as defined under the Representative for Children and Youth Act within 15 months of their 19th birthday.
3. Require the Select Standing Committee on Children and Youth to complete a review of the Representative's monitoring functions described in section 6(1)(b) by April 1, 2015.

## Part 4 – Reviews and Investigations of Critical Injuries and Deaths

4. Authorize the Representative to investigate the critical injury or death of a child if a public body requests and provides written consent despite 13(1)(c).
5. Allow the Representative to disclose the results of an individual review with the public body or director responsible for the reviewable service.

## Part 5 – Administrative and General Provisions

6. Require the Representative to deliver the service plan to the Speaker before September 30 of each year.
7. Require the Select Standing Committee on Children and Youth to undertake a comprehensive review of this Act or a review of portions of this Act every 5 years, with the first 5-year period beginning on April 1, 2012.

# Appendix D: *Representative for Children and Youth Act*

## REPRESENTATIVE FOR CHILDREN AND YOUTH ACT

[SBC 2006] CHAPTER 29

Assented to May 18, 2006

### Contents

#### Part 1 — Interpretation

1 Definitions

#### Part 2 — Appointment of Representative

2 Appointment of Representative for Children and Youth

3 Remuneration

4 Resignation, removal or suspension of representative

5 Appointment of acting representative

#### Part 3 — Representative's Functions and General Powers

6 Functions of representative

7 Representative's staff

8 Power to delegate

9 No power to act as legal counsel

10 Right to information

#### Part 4 — Reviews and Investigations of Critical Injuries and Deaths

11 Reviews of critical injuries and deaths

12 Investigations of critical injuries and deaths

13 Jurisdiction of representative in investigations

14 Power to compel persons to answer questions and order disclosure

14.1 Contempt proceeding for uncooperative person

15 Multidisciplinary team

15.1 Consultation, disclosure and recommendations

16 Reports after reviews and investigations

## **Part 5 — Administrative and General Provisions**

17 Service plan

18 Preparation of estimates for appropriation purposes

19 Annual reports

20 Special reports

21 Other financial requirements

22 Agreements

23 Confidentiality

24 Privileges respecting communications and information

25 Personal liability protection

26 Communication by child

27 Protection for persons giving information to or assisting representative

28 Offence

29 Power to make regulations

30 Review of the Act

## **Part 6 — Transitional Provisions**

30.1 Transfer of records

31-37 Consequential Amendments

38 Commencement

## **Part 1 — Interpretation**

### **Definitions**

1 In this Act:

“child” means a person under 19 years of age;

“critical injury” means an injury to a child that may

(a) result in the child’s death, or

(b) cause serious or long-term impairment of the child’s health;

“designated services” means any of the following services or programs for children and their families provided under an enactment or provided or funded by the government:

- (a) services or programs under the Adoption Act, the Child Care BC Act, the Child Care Subsidy Act, the Child, Family and Community Service Act, the Community Living Authority Act and the Youth Justice Act;
- (b) early childhood development and child care services;
- (c) mental health services for children;
- (d) addiction services for children;
- (e) services for youth and young adults during their transition to adulthood;
- (f) additional services or programs that are prescribed under section 29 (2) (a);

“director” means a director designated under the Child, Family and Community Service Act;

“personal information” has the same meaning as in the Freedom of Information and Protection of Privacy Act, but includes contact information as defined in that Act;

“public body” has the same meaning as in the Freedom of Information and Protection of Privacy Act;

“representative” means the Representative for Children and Youth appointed under section 2 and, other than in sections 2 (1), (3) and (4), 4 (2) and (3) and 5, includes a person appointed under section 5 to act as the Representative for Children and Youth;

“reviewable services” means any of the following designated services:

- (a) services or programs under the Child, Family and Community Service Act and the Youth Justice Act;
- (b) mental health services for children;
- (b.1) addiction services for children;
- (c) additional designated services that are prescribed under section 29 (2) (b);

“special committee” means a special committee of the Legislative Assembly;

“standing committee” means, except in sections 18 and 21, the Select Standing Committee on Children and Youth;

“youth” means a person who is 16 years of age or older but is under 19 years of age.

## **Part 2 — Appointment of Representative**

### **Appointment of Representative for Children and Youth**

- 2 (1) The Legislative Assembly, by resolution, may appoint as the Representative for Children and Youth a person who has been unanimously recommended for the appointment by a special committee.
- (2) The representative is an officer of the Legislature.
- (3) The representative must be appointed for a term of 5 years and may be reappointed under subsection (1) for a further 5 year term.
- (4) A person must not be appointed under subsection (1) for a third or subsequent term.

## Remuneration

- 3 (1) The representative is entitled
  - (a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia, and
  - (b) to be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the functions and duties of the office.
- (2) The public service plan as defined in section 1 (1) of the Public Sector Pension Plans Act applies to the representative.

## Resignation, removal or suspension of representative

- 4 (1) The representative may resign at any time by giving written notice
  - (a) to the Speaker of the Legislative Assembly, or
  - (b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.
- (2) By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the representative, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.
- (3) If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may suspend, by unanimous resolution, the representative for cause or incapacity, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

## Appointment of acting representative

- 5 (1) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, the Legislative Assembly, on the recommendation of the standing committee, may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:
  - (a) the suspension ends;
  - (b) a person is appointed under section 2;
  - (c) the representative returns to office after the temporary absence.
- (2) If the representative is suspended, the office is vacant or the representative is temporarily absent because of illness or another reason, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the standing committee may appoint an acting representative to exercise the powers and perform the functions and duties of the representative until whichever of the following is the case and occurs first:
  - (a) the suspension ends;

- (b) a person is appointed under section 2;
  - (c) the representative returns to office after the temporary absence.
- (3) If, in the circumstances set out in subsection (2), the standing committee is not established, the Lieutenant Governor in Council may make the appointment referred to in that subsection.

## Part 3 — Representative’s Functions and General Powers

### Functions of representative

- 6 (1) The representative is responsible for performing the following functions in accordance with this Act:
- (a) support, assist, inform and advise children and their families respecting designated services, which activities include, without limitation,
    - (i) providing information and advice to children and their families about how to effectively access designated services and how to become effective self-advocates with respect to those services,
    - (ii) advocating on behalf of a child receiving or eligible to receive a designated service, and
    - (iii) supporting, promoting in communities and commenting publicly on advocacy services for children and their families with respect to designated services;
  - (a.1) support, assist, inform and advise young adults and their families respecting prescribed services and programs, which activities include, without limitation,
    - (i) providing information and advice to young adults and their families about how to effectively access prescribed services and programs and how to become effective self-advocates with respect to those services and programs,
    - (ii) advocating on behalf of a young adult receiving or eligible to receive a prescribed service or program, and
    - (iii) supporting, promoting in communities and commenting publicly on advocacy services for young adults and their families with respect to prescribed services and programs;
  - (b) monitor, review, audit and conduct research on the provision of a designated service by a public body or director for the purpose of making recommendations to improve the effectiveness and responsiveness of that service, and comment publicly on any of these functions;
  - (c) review, investigate and report on the critical injuries and deaths of children as set out in Part 4;
  - (d) perform any other prescribed functions.
- (2) In this section, “young adult” means a person who
- (a) is 19 years of age or older but is under 24 years of age, and
  - (b) received a reviewable service within 15 months before the person’s 19th birthday.

## **Representative's staff**

- 7 (1) The representative, in accordance with the Public Service Act, may appoint
- (a) one or more deputy representatives in accordance with the regulations, and
  - (b) any other employees necessary to enable the representative to exercise the powers and perform the functions and duties of the office.
- (2) Before appointing a deputy representative under subsection (1) (a), the representative must consider the skills, qualifications and experience of the person, including the person's understanding of or involvement in the lives of aboriginal children and their families in British Columbia.
- (3) For the purpose of the application of the Public Service Act to subsection (1) of this section, the representative is deemed to be a deputy minister.
- (4) The representative may retain consultants, experts, specialists, or other persons that the representative considers necessary to enable or assist the representative to exercise the powers or perform the functions or duties under this Act.
- (5) The representative may establish the remuneration and other terms and conditions of a person retained under subsection (4) and the Public Service Act does not apply in respect of that person.

## **Power to delegate**

- 8 (1) The representative may delegate, in writing, to a person or class of persons any power, function or duty of the representative under this Act, subject to terms and conditions the representative considers appropriate, except the power
- (a) to delegate under this section, and
  - (b) to make a report under this Act.
- (2) A delegation under this section is revocable at will and does not prevent the representative from exercising the delegated power at any time.
- (3) If the representative who makes a delegation ceases to hold office, the delegation continues in effect so long as the delegate continues in office unless revoked by a succeeding representative.
- (4) A person purporting to exercise a power or perform a function or duty of the representative through a delegation under this section must produce, on request, evidence of the person's authority to exercise the power or perform the function or duty.

## **No power to act as legal counsel**

- 9 The representative may not act as legal counsel in person or by agent.

## **Right to information**

- 10 (1) In this section, "officer of the Legislature" has the same meaning as in the Freedom of Information and Protection of Privacy Act, but does not include the representative.
- (2) The representative has the right to any information that

- (a) is in the custody or control of
    - (i) a public body other than an officer of the Legislature, or
    - (ii) a director, and
  - (b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.
- (3) The public body or director must disclose to the representative the information to which the representative is entitled under subsection (2).
- (4) This section applies despite
- (a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
  - (b) any other enactment, other than a restriction in section 51 of the Evidence Act.

## **Part 4 — Reviews and Investigations of Critical Injuries and Deaths**

### **Reviews of critical injuries and deaths**

- 11 (1) After a public body responsible for the provision of a reviewable service becomes aware of a critical injury or death of a child who was receiving, or whose family was receiving, the reviewable service at the time of, or in the year previous to, the critical injury or death, the public body must provide information respecting the critical injury or death to the representative for a review under subsection (3).
- (2) For the purposes of subsection (1), the public body may compile the information relating to one or more critical injuries or deaths and provide that information to the representative in time intervals agreed to between the public body and the representative.
- (3) The representative may conduct a review for the following purposes:
- (a) to determine whether to investigate a critical injury or death under section 12;
  - (b) to identify and analyze recurring circumstances or trends
    - (i) to improve the effectiveness and responsiveness of a reviewable service, or
    - (ii) to inform improvements to broader public policy initiatives.
- (4) If, after completion of a review under subsection (3), the representative decides not to conduct an investigation under section 12, the representative may disclose the results of the review to the public body, or the director, responsible for the provision of the reviewable service that is the subject of the review.

## Investigations of critical injuries and deaths

- 12 (1) The representative may investigate the critical injury or death of a child if, after the completion of a review of the critical injury or death of the child under section 11, the representative determines that
- (a) a reviewable service, or the policies or practices of a public body or director, may have contributed to the critical injury or death, and
  - (b) the critical injury or death
    - (i) was, or may have been, due to one or more of the circumstances set out in section 13 (1) of the Child, Family and Community Service Act,
    - (ii) occurred, in the opinion of the representative, in unusual or suspicious circumstances, or
    - (iii) was, or may have been, self-inflicted or inflicted by another person.
- (2) The standing committee may refer to the representative for investigation the critical injury or death of a child.
- (3) After receiving a referral under subsection (2), the representative
- (a) may investigate the critical injury or death of the child, and
  - (b) if the representative decides not to investigate, must provide to the standing committee a report of the reasons the representative did not investigate.
- (4) If the representative decides to investigate the critical injury or death of a child under this section, the representative must notify
- (a) the public body, or the director, responsible for the provision of the reviewable service, or for the policies or practices, that may have contributed to the critical injury or death, and
  - (b) any other person the representative considers appropriate to notify in the circumstances.

## Jurisdiction of representative in investigations

- 13 Despite section 12, this Act does not authorize the representative to investigate the critical injury or death of a child
- (a) until the completion of a criminal investigation and criminal court proceedings respecting the critical injury or death of the child,
  - (b) if a coroner investigates the death of the child, until the earlier of
    - (i) the date on which a coroner has
      - (A) reported to the chief coroner under section 15 or 16 of the Coroners Act, and
      - (B) the chief coroner indicates to the coroner, under section 44 (1) (b) of the Coroners Act, that the chief coroner has no further directions in respect of the death,
    - (ii) the date on which a coroner sends, under section 22 (2) of the Coroners Act, notice of an inquest to a sheriff, directing the sheriff to summon a jury for that purpose, and

- (iii) one year after the death, and
- (c) if a public body, or a director, responsible for the provision of a reviewable service has, at the time of the critical injury or death of the child, written procedures in place for investigating critical injuries or deaths and the public body or director investigates the critical injury or death of the child, until the earliest of
  - (i) the completion of the investigation,
  - (ii) one year after the critical injury or death of the child, and
  - (iii) the date the public body or director provides the representative with a written consent to investigate the critical injury or death of the child.

### **Power to compel persons to answer questions and order disclosure**

- 14 (1) For the purposes of an investigation under this Part, the representative may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the representative to answer questions on oath or affirmation, or in any other manner;
  - (b) produce for the representative a record or thing in the person's possession or control.
- (2) The representative may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (1), or
  - (b) directing any officers and governing members of a person to cause the person to comply with an order made under subsection (1).

### **Contempt proceeding for uncooperative person**

- 14.1 The failure or refusal of a person subject to an order under section 14 to do any of the following makes the person, on application to the Supreme Court by the representative, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:
- (a) attend before the representative;
  - (b) take an oath or make an affirmation;
  - (c) answer questions;
  - (d) produce records or things in the person's possession or control.

### **Multidisciplinary team**

- 15 In accordance with the regulations, the representative may establish and appoint the members of a multidisciplinary team to provide advice and guidance to the representative respecting the reviews and investigations of critical injuries and deaths of children conducted under this Part.

## Consultation, disclosure and recommendations

- 15.1 (1) At any time during or after an investigation under section 12, the representative may consult with a public body, director or person the representative considers appropriate in relation to the critical injury or death of the child.
- (2) If during an investigation under section 12 the representative receives a request for consultation from a public body or director, the representative must consult with the public body or director in relation to the critical injury or death of the child.
- (3) If consulting with a public body, director or person under this section, the representative may
- (a) disclose to the public body, director or person the personal information the representative considers necessary and appropriate, and
  - (b) make recommendations to the public body or director, or to another public body or director, to improve the effectiveness and responsiveness of a reviewable service.

## Reports after reviews and investigations

- 16 (1) The representative may aggregate and analyze the information received from the reviews and investigations conducted under sections 11 and 12 and produce a report of the aggregated and analyzed information that does not contain information in individually identifiable form.
- (2) The representative must provide a report made under subsection (1) to the following:
- (a) the standing committee;
  - (b) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report;
  - (c) any other public body, director or person that the representative considers appropriate.
- (3) After an investigation of the critical injury or death of a child under section 12, the representative must make a report on the individual critical injury or death of the child.
- (4) A report made under subsection (3) must contain the representative's reasons for undertaking the investigation and may contain the following:
- (a) recommendations for
    - (i) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report, or
    - (ii) any other public body, director or person that the representative considers appropriate;
  - (b) personal information, if, in the opinion of the representative,
    - (i) the disclosure is necessary to support the findings and recommendations contained in the report, and
    - (ii) the public interest in the disclosure outweighs the privacy interests of the individual whose personal information is disclosed in the report;

(c) any other matters the representative considers relevant.

(5) A report made under subsection (3) may be provided to any person that the representative considers appropriate and must be provided to

(a) the standing committee,

(b) the public body, or the director, responsible for the provision of a reviewable service that is a subject of the report, and

(c) the public body, or the director, that is a subject of recommendations in the report, if not already provided the report under paragraph (b).

(6) to (8) [Repealed 2007-5-15.]

## **Part 5 — Administrative and General Provisions**

### **Service plan**

17 (1) For the 2008/2009 fiscal year of the government and for each subsequent fiscal year of the government, the representative must prepare a service plan that includes a statement of goals and identifies specific objectives and performance measures that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(2) The representative must deliver a service plan described in subsection (1) to the Speaker before September 30 of the year immediately prior to the year to which the service plan applies, and the Speaker must lay the service plan before the Legislative Assembly and the standing committee as soon as possible after receiving it.

### **Preparation of estimates for appropriation purposes**

18 (1) In this section and section 21, “standing committee” means the Select Standing Committee on Finance and Government Services.

(2) For the 2008/2009 fiscal year of the government and for each subsequent fiscal year of the government, the representative must present to the standing committee an estimate of the resources, stated in a form suitable for inclusion in the main estimates, that will be required to exercise the powers and perform the functions and duties of the representative during that fiscal year.

(3) The standing committee must review and may adjust as it considers appropriate the estimate received under subsection (2) and must transmit the resulting estimate to the minister responsible for the Financial Administration Act.

(4) The estimate transmitted under subsection (3) is deemed to be recommended by the standing committee and must be included by the minister responsible for the Financial Administration Act as part of the main estimates for the fiscal year in respect of which the estimate was made and submitted to the Lieutenant Governor for recommendation to the Legislative Assembly.

(5) Notice of a meeting of the standing committee for the purposes of subsection (3) must be given to the representative and to the chair of Treasury Board.

## Annual reports

19 (1) Beginning in 2009, the representative must report annually, before September 30 of each year, to the Speaker of the Legislative Assembly on

(a) the representative's work with aboriginal children and their families,

(a.1) the other work of the representative, and

(b) the attainment of the goals and the specific objectives and performance measures of the representative as set out in the service plan referred to in section 17 (1),

and this report must include financial statements for the representative prepared in accordance with generally accepted accounting principles.

(2) In relation to subsection (1) (b), the report must compare actual results for the preceding fiscal year with the expected results identified in the service plan for the representative for that fiscal year.

(3) The Speaker must lay each annual report before the Legislative Assembly and the standing committee as soon as possible.

## Special reports

20 (1) The representative may make a special report to the Legislative Assembly if the representative considers it necessary to do so.

(2) A report made under subsection (1) may contain the following:

(a) recommendations for

(i) the public body, or the director, responsible for the provision of a designated service, or

(ii) any other public body or director the representative considers appropriate;

(b) a report on the level of compliance with previous recommendations made by the representative under this Act to

(i) the public body, or the director, responsible for the provision of a designated service, or

(ii) any other public body or director;

(b.1) a report on the provision of a designated service for children in different geographic, racial, cultural or religious communities of British Columbia;

(c) any other matter the representative considers necessary.

(3) The representative must deliver the special report to the Speaker, and the Speaker must lay the report before the Legislative Assembly and the standing committee as soon as possible.

## Other financial requirements

- 21 (1) If required by the standing committee referred to in section 18 (1) or the minister responsible for the Financial Administration Act, the representative must submit financial reports and statements in the form, with the information and at the time the standing committee or the minister requests.
- (2) The minister responsible for the Financial Administration Act may direct the Comptroller General to examine, and report to Treasury Board on, any or all of the financial and accounting operations of the representative.
- (3) In accordance with the Auditor General Act, the Auditor General must audit the accounts of the representative at least once each year.

## Agreements

- 22 The representative may enter into an agreement for the purpose of exercising the powers and performing the functions and duties under this Act.

## Confidentiality

- 23 (1) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, the representative must take an oath before the Clerk of the Legislative Assembly
- (a) to faithfully and impartially exercise the powers and perform the functions and duties of the representative, and
  - (b) not to divulge any information received under this Act, except as permitted under this Act.
- (2) Before beginning to exercise his or her powers and perform his or her functions and duties under this Act, each deputy representative appointed under section 7 (1) (a) must take an oath before the representative
- (a) to faithfully and impartially exercise the powers and perform the functions and duties delegated by the representative to the deputy representative, and
  - (b) not to divulge any information received under this Act, except as permitted under this Act.
- (3) For the purposes of subsection (2), the representative is a commissioner for taking affidavits in British Columbia.
- (4) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must, except as specifically authorized under this Act, maintain confidentiality in respect of all matters that come to their knowledge in the exercise of powers and the performance of functions and duties under this Act.
- (4.1) Despite any other provision of this Act except subsection (7) of this section, on the request of any person, the representative may disclose information, including personal information, if, in the opinion of the representative,
- (a) the disclosure is necessary to confirm the representative is performing, has performed or intends to perform one or more of the functions set out in section 6 (1) (a) to (c) in respect of an individual, and

- (b) the public interest in the disclosure outweighs the privacy interests of any individual whose personal information is disclosed.
- (5) The representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of any matter coming to their knowledge in the exercise of powers and the performance of functions and duties under this Act, except
- (a) to enforce the representative's powers of review and investigation,
  - (b) to enforce compliance with this Act, or
  - (c) with respect to a trial of a person for perjury.
- (6) [Repealed 2008-42-123.]
- (7) Subject to subsections (5) and (8) (a), the representative and a person appointed, employed or retained by the representative under section 7 (1) or (4) or 15 must not disclose information that could reasonably be expected to reveal the identity of a person who has made a report under section 14 of the Child, Family and Community Service Act.
- (8) Subsection (7) does not apply if
- (a) the person who made the report consents to the disclosure.
  - (b) [Repealed 2008-42-123.]

**Privileges respecting communications and information**

24 A person has the same privileges in relation to giving information, answering questions or producing documents or things to the representative, or to a person appointed, employed or retained under section 7 (1) or (4), relating to a review or an investigation under Part 4 as the person would have with respect to a proceeding in a court.

**Personal liability protection**

25 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against

- (a) the representative,
- (b) a person appointed, employed or retained under section 7 (1) or (4), or
- (c) a member of a multidisciplinary team appointed under section 15

because of anything done or omitted in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any function or duty under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

(3) Subsection (1) does not absolve the government from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government would be vicariously liable if this section were not in force.

(4) The government must indemnify any person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken against the person for anything done or omitted in good faith as described in subsection (1).

### **Communication by child**

26 (1) If a child in a foster home, group home, facility or other place in which a designated service is provided asks to communicate with the representative, the person in charge of that place must immediately forward the request to the representative.

(2) If a child in a foster home, group home, facility or other place in which a designated service is provided writes a letter addressed to the representative, the person in charge of that place must immediately forward the letter unopened to the representative.

### **Protection for persons giving information to or assisting representative**

27 A person must not discharge, suspend, expel, intimidate, coerce, evict or impose a financial or other penalty on or otherwise discriminate against another person because the other person gives information to the representative or otherwise assists the representative in an investigation or other proceeding under this Act.

### **Offence**

28 (1) A person who contravenes section 27 commits an offence and is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(2) Section 5 of the Offence Act does not apply to this Act.

### **Power to make regulations**

29 (1) The Lieutenant Governor in Council may make regulations authorized by section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) for the purposes of the definition of “designated services”, prescribing an additional service or program that is

(i) provided, authorized or funded under an Act,

(ii) provided, authorized or funded by a ministry or agency of the government, or

(iii) provided in a facility or class of facilities licensed or regulated under an Act;

(b) for the purposes of the definition of “reviewable services”, prescribing an additional designated service that is a reviewable service;

(c) prescribing other functions of the representative;

(c.1) for the purposes of section 6 (1) (a.1), prescribing services and programs that are

(i) provided, authorized or funded under an Act,

- (ii) provided, authorized or funded by a ministry or agency of the government, or
  - (iii) provided in a facility or class of facilities licensed or regulated under an Act;
  - (d) respecting the qualifications of a deputy representative or the procedures for appointing a deputy representative;
  - (e) respecting matters relating to the establishment of a multidisciplinary team, including appointment criteria and procedures;
  - (f) [Repealed 2007-5-22.]
  - (g) defining any word or expression used but not defined in this Act;
  - (h) respecting any matters that are necessary for the orderly transition from the application of the Office of Children and Youth Act to the application of this Act.
- (3) In making regulations under this section, the Lieutenant Governor in Council may do one or more of the following:
- (a) in relation to regulations under subsection (2) (a), prescribe different services or programs for the purposes of different provisions of this Act;
  - (b) in relation to regulations under subsection (2) (b), prescribe different designated services for the purposes of different provisions of this Act;
  - (c) in relation to regulations under subsection (2) (d), set different qualifications or different procedures for the appointment of deputy representatives carrying out different functions;
  - (d) make different regulations for different persons or classes of persons;
  - (e) make different regulations for different geographical areas in British Columbia;
  - (f) delegate a matter to a person;
  - (g) confer a discretion on a person.

## Review of the Act

- 30 (1) To determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children, and young adults as defined in that section, are met, the standing committee, before April 1, 2017, and at least once every 5 years after that, must undertake a comprehensive review of this Act or a review of portions of this Act.
- (2) In addition to the comprehensive review required under subsection (1), the standing committee must also complete, by April 1, 2015, an assessment of the effectiveness of section 6 (1) (b) in ensuring that the needs of children are met.

## Part 6 — Transitional Provisions

### Transfer of records

30.1 (1) On the repeal of the Office for Children and Youth Act, all records obtained under that Act must be transferred to the representative, including, but not limited to, all records originally produced under the Child, Youth and Family Advocacy Act or the Children’s Commission Act.

(2) On the effective date of a transfer under subsection (1),

(a) the records cease to be the records of the transferor and become the records of the transferee, and

(b) the confidentiality provisions of this Act apply to the transferred records.

### Consequential Amendments

*[Note: See Table of Legislative Changes for the status of sections 31 to 37.]*

Section(s)	Affected Act
31–34	Child, Family and Community Service Act
35–36	Freedom of Information and Protection of Privacy Act
37	Office for Children and Youth Act

### Commencement

38 This Act comes into force by regulation of the Lieutenant Governor in Council.

