

# *Special Committee to Appoint a Representative for Children and Youth*



NOVEMBER 2016





November 15, 2016

To the Honourable  
Legislative Assembly of the  
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Representative for Children and Youth containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

Don McRae, MLA  
Chair

Michelle Mungall, MLA  
Deputy Chair



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## Composition of the Committee

### Members

Don McRae	Chair	Comox Valley
Michelle Mungall	Deputy Chair	Nelson-Creston
Carole James		Victoria-Beacon Hill
John Martin		Chilliwack
Laurie Throness		Chilliwack-Hope

### Committee Staff

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Ron Wall, Manager, Committee Research Services

## Terms of Reference

On March 1, 2016, the Legislative Assembly agreed that a Special Committee be appointed to select and unanimously recommend to the Legislative Assembly the appointment of a Representative for Children and Youth, pursuant to section 2 of the *Representative for Children and Youth Act*, S.B.C. 2006, c. 29.

The said Special Committee shall have the powers of a Select Standing Committee and in addition is 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 adjourn from place to place as may be convenient; and
- d) to retain such 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.



## Introduction

The establishment of the position of Representative for Children and Youth as an officer of the Legislature was the first recommendation of the April 2006 report of the Honourable Ted Hughes titled, *BC Children and Youth Review*. Former Justice Hughes proposed a framework of external oversight of the provincial child welfare system, centred around a new independent officer of the Legislature, who would report regularly to a new parliamentary committee of the Legislative Assembly, the Select Standing Committee on Children and Youth.

The Representative's status as an officer of the Legislature reflected former Justice Hughes' assessment of British Columbia's positive experience with the appointment of other statutory officers. He stated that establishing the Representative as an officer of the Legislature would, "give the public confidence in the office's independence." Independence and public confidence would enable the Representative to carry out the position's responsibilities with respect to the child welfare system.

Government and Opposition supported the recommendations in the Hughes report. Legislation implementing the recommendations – the *Representative for Children and Youth Act* – was introduced by government, and adopted unanimously by the Legislative Assembly on May 18, 2006.

In the context of the Representative's status as a statutory officer, the Act requires that an all-party special committee of the Legislative Assembly unanimously recommend the appointment of a person to be the Representative for a term of five years, with the possibility of a second five year term. As is the case with other statutory officers, the Act authorizes the Select Standing Committee on Finance and Government Services to review and consider the Representative's proposed budgets. In addition, the Act requires the Representative to submit an annual report on the work of the Office of the Representative for Children and Youth to the Speaker for tabling in the Legislative Assembly, and enables the Representative to submit special reports on the child welfare system to the Speaker for tabling in the Legislative Assembly.

The Act also sets out the Representative's responsibilities to: review, investigate, and report on the critical injuries and deaths of children; provide advocacy services on designated and prescribed child welfare services; and monitor, review, and audit the effectiveness of these services.

The Act requires a comprehensive review of its provisions by the Select Standing Committee on Children and Youth before April 1, 2017, and at least once every 5 years after that. Pursuant to the requirement, the Select Standing Committee on Children and

Youth launched a review of the Act in October 2016. Information on that Committee's work is available at <https://www.leg.bc.ca/parliamentary-business/committees/cay>

The Act's appointment procedure was used for the first time in 2006, to appoint the province's initial Representative for Children and Youth, Mary Ellen Turpel-Lafond, for a term of five years. In 2011, a second all-party special committee made a unanimous recommendation to appoint Ms. Turpel-Lafond for an additional term of five years. Ms. Turpel-Lafond began her first term as Representative on January 1, 2007, and her second term ended on November 27, 2016.

On March 1, 2016, the third Special Committee to Appoint a Representative for Children and Youth was established to unanimously recommend to the Legislative Assembly the appointment of a Representative for Children and Youth.

On behalf of all Members of the Legislative Assembly, the Committee would like to thank Ms. Turpel-Lafond for her distinguished work in establishing the Office of the Representative for Children and Youth, and for her many contributions to children and youth and their families across British Columbia.

On October 2, 2016, government announced that there would not be a fall legislative sitting, and, as such, the Legislative Assembly is not expected to resume until February 14, 2017. Since the Office of the Representative will have become vacant on November 27, 2016, an Acting Representative may be appointed by the Select Standing Committee on Children and Youth on an interim basis pursuant to section 5(2) of the *Representative for Children and Youth Act*.

## Meeting Schedule

On March 1, 2016, the Committee received its terms of reference from the Legislative Assembly. The Committee met on the following dates for the purposes described below.

Wednesday, March 16, 2016	Organizational meeting
Monday, April 4, 2016	Planning
Tuesday, April 12, 2016	Planning
Tuesday, May 10, 2016	Planning
Thursday, May 12, 2016	Planning
Tuesday, May 24, 2016	Candidate interviews
Wednesday, May 25, 2016	Candidate interviews

Thursday, June 9, 2016	Candidate interviews Deliberations
Wednesday, June 29, 2016	Deliberations
Wednesday, July 13, 2016	Deliberations
Thursday, July 28, 2016	Deliberations
Thursday, September 29, 2016	Deliberations
Friday, October 7, 2016	Planning
Tuesday, October 18, 2016	Candidate interviews
Wednesday, November 2, 2016	Deliberations
Monday, November 7, 2016	Deliberations Adoption of Report

The Committee's documents, proceedings, and this report are available at:  
<https://www.leg.bc.ca/parliamentary-business/committees/40thparliament-5thsession-rfcay>

## Recruitment Process

On March 16, 2016, the Committee held an initial organizational meeting and elected the Chair and Deputy Chair. The Committee reviewed a preliminary workplan, and a draft profile and competencies for the position of Representative for Children and Youth, and approved an advertisement for the position as well as a broad strategy for advertising the position. The Committee agreed on April 10, 2016 to revise the advertisement to emphasize the importance of experience in working productively with indigenous individuals, families and communities. A copy of the advertisement is provided in Appendix A.

The advertisement was placed in national and British Columbia daily newspapers, inviting applications for the position of Representative for Children and Youth, by a deadline of May 6, 2016. The advertisement was also distributed to public and professional organizations and stakeholders, First Nations Aboriginal leaders, organizations, and stakeholders at the provincial and national levels, and international public and professional organizations. A social media strategy was used to circulate the advertisement broadly, using Twitter and Facebook postings and the Committee's website.

By the deadline of May 6, 2016, the Committee received 59 applications for the position of Representative for Children and Youth. Committee Members agreed to a shortlist of applicants, based on their demonstrated leadership and management record, experience with indigenous individuals, families and communities, and their knowledge of the Office of the Representative for Children and Youth, relevant legislation, parliamentary government, and the child serving system in British Columbia. Candidate interviews were conducted on May 24, 2016, May 25, 2016, and June 9, 2016. While the Committee received many strong applications during the initial recruitment process, it could not reach a consensus as required by legislation, and decided to extend the application period to ensure as comprehensive a process as possible.

On July 28, 2016, the Committee reopened its recruitment process, with an advertisement inviting additional applications for the position of Representative for Children and Youth by September 23, 2016 (a copy of this advertisement is included in Appendix A). By that deadline, the Committee received 62 applications. Committee Members subsequently agreed to a shortlist of applicants based on demonstrated experience and knowledge, and conducted a second round of candidate interviews on October 18, 2016. On behalf of the Committee, the Chair and Deputy Chair conducted extensive reference checks as part of the selection process.

In their deliberations on the second round of shortlisted candidates' experience, achievements, and qualifications, Committee Members were impressed by Mr. Bernard Richard's record of seasoned and effective management of organizations handling difficult and sensitive issues, his broad range of public service achievements, his considerable experience with indigenous communities, and his passion for serving the vulnerable in society, particularly children. Mr. Bernard's review of the roles and functions of New Brunswick's eight statutory officers at the request of the province's Legislative Assembly indicates the high regard in which he is held by the public, experts and stakeholders, and legislators on all sides of the Assembly, and his experience working in non-partisan independent positions demonstrates a proven ability to serve effectively as an independent officer of the Legislature. Members appreciated his principled and pragmatic approach to management, and his cooperative and collaborative leadership style in working with governments, indigenous leaders and stakeholders, and other public and private sector organizations and individuals in serving children and youth. Members also recognized Mr. Richard's record of high ethical standards, fairness, and accountability in his work as a legislator and Cabinet Minister, as Ombudsman and Child and Youth Advocate for the province of New Brunswick, in his involvement with non-profit organizations serving children and youth, and in his engagement by indigenous leaders on children and family services, and on the development of cultural, language, and leadership opportunities for indigenous children and youth.

Committee Members concluded that Mr. Richard's breadth of background, experience, and abilities would provide continued strong leadership for the important position of Representative for Children and Youth. Accordingly, the Committee agreed unanimously to recommend to the Legislative Assembly that Mr. Richard be appointed as Representative for Children and Youth for a term of five years.

## Recommendation

The Committee unanimously recommends to the Legislative Assembly that Bernard Richard be appointed as an officer of the Legislature, to exercise the powers assigned to the Representative for Children and Youth for the province of British Columbia, for a five year term, pursuant to section 2 of the *Representative for Children and Youth Act* (S.B.C. 2006, c. 29).

## Biographical Information



Bernard Richard is a lawyer whose early career was in social work. He is a member of the Canadian Bar Association, the Law Society of New Brunswick, and the Association des juristes d'expression française du Nouveau-Brunswick. He practiced law at Cap-Pelé, New Brunswick, with the law firm of Richard, Savoie, Belliveau. He was elected to the Cap-Pelé municipal council and served as deputy mayor. He was also the Secretary General of the Société Nationale de l'Acadie from 1980 to 1984.

Mr. Richard served as a member of the Legislative Assembly of New Brunswick from 1991 to 2003. During that period, he held the following responsibilities: Minister of State for Intergovernmental and Aboriginal Affairs; Acting Minister of Justice and Attorney General; Minister of Education; and Minister responsible for social policy renewal. He assumed the role of Leader of the Official Opposition, Opposition House Leader and Chair of caucus. He has twice been the chargé de mission for the Americas region of the Assemblée Parlementaire de la Francophonie.

In 2004, Mr. Richard assumed the responsibilities of New Brunswick Ombudsman, including oversight of right to information and privacy matters. He was the sixth person to occupy this position. Mr. Richard has chaired the Forum of Canadian Ombudsmen, the Canadian Council of Parliamentary Ombudsman and the Association des Ombudsmans et Médiateurs de la Francophonie. In November 2006, Mr. Richard was added the mandate of New Brunswick's first Child and Youth Advocate. In those capacities, he has published a number of reports, most notably pertaining to youth mental health, First Nations child welfare, and the youth criminal justice system.

In recent years, Mr. Richard was asked by the New Brunswick Legislative Assembly to carry out a review of the roles and functions of New Brunswick's eight legislative officers. Several of his recommendations have been implemented, including the adoption of fixed, non-renewable terms for office holders. Finally, he leads a team of experts, on behalf of New Brunswick First Nations Chiefs, tasked with developing a new model and approach to Child and Family Services delivery for children and their families. This assignment includes coordinating the oversight provided by a tripartite Working Group with federal, provincial and First Nations representatives.

Mr. Richard has been actively involved in numerous organizations. He has been a member and past Chair of the Board of Directors of Plan Canada, one of Canada's major non-governmental organizations, which supports children in developing countries; he

has served on the Members Assembly of Plan International. He has chaired a Working Group on children's rights in Francophone countries. He was the Founder and first Chair of the First Nations Children's Futures Fund which supports the development of play spaces, culture, language, and leadership opportunities for First Nations Children in New Brunswick, and is a past Chair of Dots NB, a non-profit organization advocating for improved mental health services for children and youth. He has been a member and past Chair of the Advisory Council of ACCESS Canada Open Minds, a research project on youth mental health based at McGill University. He has also served on the Action Committee for Children and Teens of the Canadian Pediatric Society, and the Board of Directors of Partners for Youth Inc.

## Appendix A – Advertisements

### LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

Special Committee to Appoint a Representative for Children and Youth

Chair: Don McRae, MLA (Comox Valley) Deputy Chair: Michelle Mungall, MLA (Nelson-Creston)

## REPRESENTATIVE FOR CHILDREN AND YOUTH

The Legislative Assembly of British Columbia has established an all-party Special Committee to Appoint a Representative for Children and Youth. The Committee is mandated to unanimously recommend to the Legislative Assembly the appointment of a Representative as provided by the *Representative for Children and Youth Act*.

The Representative is a non-partisan Officer of the Legislature who provides advocacy services to children, young adults and families regarding designated services; monitors, reviews, and audits the effectiveness of these services; and reviews, investigates, and reports on the critical injuries and deaths of children.

An expert in administrative and procedural fairness, the Representative leads a team of over 56 dedicated staff, with headquarters in Victoria, and regional offices in Burnaby and Prince George.

The successful applicant will be recognized as a person of integrity and standing within his or her professional community, with demonstrated leadership and collaborative problem-solving skills as well as a solid record of accomplishment in public or private sector administration. The preferred candidate should also possess experience in leading sensitive and complex investigations, a good understanding of the role, responsibilities and activities of the Office of the Representative for Children and Youth and its relationship to the Legislative Assembly of British Columbia, and knowledge of the provincial child serving system.

The appointment is for a term of five years, and may be renewed for one additional five-year term. The salary for the position is equal to the salary paid to a Chief Judge of the Provincial Court of British Columbia.

Applications should be received by email, fax or mail at the address below no later than **Friday, May 6, 2016**. Although the Special Committee appreciates the interest of all applicants, only those who are invited for an interview will be contacted. All applications received will be held in confidence.

For further information, please visit our website [www.leg.bc.ca/cmt/rfcay](http://www.leg.bc.ca/cmt/rfcay) or contact:

Kate Ryan-Lloyd, Deputy Clerk  
and Clerk of Committees  
Parliamentary Committees Office  
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Victoria BC V8V 1X4

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LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

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The successful applicant will be recognized as a person of integrity and standing within his or her professional community, with demonstrated leadership and collaborative problem-solving skills, experience leading sensitive and complex investigations, and a solid record of accomplishment in public or private sector administration. The successful applicant should also possess knowledge of indigenous cultures, history, and values, and experience working productively with indigenous individuals, families and communities. In addition, the successful applicant will have a good understanding of the role, responsibilities and activities of the Office of the Representative for Children and Youth, its relationship to the Legislative Assembly of British Columbia, and knowledge of the provincial child serving system.

The appointment is for a term of five years, and may be renewed for one additional five-year term. The salary for the position is equal to the salary paid to a Chief Judge of the Provincial Court of British Columbia.

Applications should be received by email, fax or mail at the address below no later than **Friday, September 23, 2016**. Although the Special Committee appreciates the interest of all applicants, only those who are invited for an interview will be contacted. All applications received will be held in confidence.

For further information, please visit our website [www.leg.bc.ca/cmt/rfcay](http://www.leg.bc.ca/cmt/rfcay) or contact:

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# Appendix B – Representative for Children and Youth Act (S.B.C. 2006, Chapter 29)

(This Act is Current to November 2, 2016)

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## **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.]

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

### Commencement

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



