



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Implementation of the *Plecas Review, Part One: Decision Time*

Special Report

April 2016

April 28, 2016

The Honourable Linda Reid
Speaker of the Legislative Assembly
Suite 207, Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Ms. Speaker,

I have the honour of submitting this special report, *Implementation of the Plecas Review, Part One: Decision Time*, to the Legislative Assembly of British Columbia. This report is prepared in accordance with Section 20 of the *Representative for Children and Youth Act*, which authorizes the Representative to make a special report to the Legislative Assembly.

Sincerely,

A handwritten signature in black ink, reading "melturpellafond", written in a cursive style.

Mary Ellen Turpel-Lafond
Representative for Children and Youth

pc: Jane Thornthwaite
Chair, Select Standing Committee on Children and Youth

Craig James
Clerk of the Legislative Assembly

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Background

On July 14, 2015, the British Columbia Supreme Court rendered reasons for judgment in the case of *J.P. v. British Columbia (Children and Family Development)*. In the opening sentence, Justice Walker stated:

This action concerns the egregious response of the Director of Child Protection ("Director") to reports that the infant plaintiffs had been sexually abused by their father, the third party, B.G.¹

Ten days later, on July 24, 2015, the provincial government announced that Bob Plecas, a former deputy minister, had been appointed to conduct an *"independent review of ministry practice into 'matters arising' from the decision and prepare a report by October 13, 2015."*²

The nature and timing of this appointment raised a number of questions relative to the role of my Office under the *Representative for Children and Youth Act (RCY Act)*, including my clear jurisdiction to conduct, if necessary, an investigation into the J.P. case itself. It also raised concerns for the family involved regarding deeply personal confidential information being provided to a ministry contractor.

In response to concerns about the legal basis for the sharing of this confidential information, in early August 2015, Mr. Plecas was designated a "director" under section 91 of the *Child, Family and Community Service Act (CFCS Act)*. This was later held by the Information and Privacy Commissioner to be a sufficient basis for Mr. Plecas to access what would otherwise be confidential material.

In a court challenge to the Plecas review, the court³ was required to consider the nature of the review, and held that the terms of reference for the review *"relate to the provision of a service under the CFCSA, within the meaning of s. 93.2 of that Act"*, which states:

93.2 (1) Subject to the regulations and in accordance with subsection (3), a director may conduct a review on any matter relating to the provision of a service under this Act for any of the following purposes:

- (a) to monitor a director's performance in the provision of the service;*
- (b) to monitor the performance of any person or agency in the provision of the service;*
- (c) to improve the provision of the service;*
- (d) or public accountability.*

¹ 2015 BCSC 1216. The Province has appealed the decision.

² See <https://news.gov.bc.ca/releases/2015CFD0028-001162>

³ 2015 BCSC 1962.

In more recent correspondence with my Office, the provincial government has described the Plecas review as being a "director's review" and an exercise of the director's "quality assurance" function under the *CFCS Act*.

A director under the *CFCS Act* is an employee of the government. It has never been made apparent or adequately explained how a person could be undertaking a truly "independent review" while at the same time acting as a director under the *CFCS Act*.

The Plecas terms of reference were changed several times after his appointment and most recently on Oct. 7, 2015, on the eve of the court hearing. He proposed that he would: *"Examine the child protection legislation, policy, standards and practice and actions taken in the J.P. case by ministry staff, supervisors and legal counsel, contracted to represent the Director under the CFCSA and provide prospective recommendations regarding how any errors or omissions evident in the case can best be minimized or avoided in future child protection cases"*⁴ (see Appendix A).

On Dec. 14, 2015, the government publicly released *Plecas Review, Part One: Decision Time*.⁵

⁴ Letter from Mr. Plecas to Minister Cadieux, letter of reply by Minister Cadieux (undated) accepts this and extends his mandate to 2016.

⁵ The document is dated Dec. 4, 2016 and was leaked to the press several days before it was made publicly available.

Content of the Plecas Report

Despite the genesis of the Plecas review being the J.P. case, the Plecas report does not substantively address the J.P. case. Instead, the Plecas report states:

Part of my mandate is to examine the conformance to policy in the J.P. case. Until my team conducts a review of the case itself – which, as I have noted, cannot occur until the spring due to previously mentioned legal and procedural delays – I believe the most helpful thing I can do is to understand and explain the circumstances under which such a case could occur.

The Plecas report does not explain how “the circumstances under which such a case could occur” can be understood and explained before an investigation of those circumstances has occurred.

The Plecas report proceeds to offer wide-ranging commentary, perspectives and recommendations on various aspects of the ministry, its staffing and organization, its funding, its operations and its expectations of its staff. The report's findings and recommendations include:

- Information-sharing systems should be developed to increase the extent to which judges and others can be more fully informed about orders (p. 34)
- Contract counsel should be subject to greater requirements to seek advice or notify the Legal Services Branch regarding complex, potentially problematic or controversial litigation (p. 35)
- Higher compensation should be paid to child protection workers (p. 19)
- The deputy minister, along with the provincial director, should convene a focused discussion with university leaders regarding existing programs (p. 29)
- “Contrarian” staff positions should be established to challenge social workers, as the Vancouver Police Department has done for its investigators (p. 30)
- The ministry should review legislative restrictions regarding privacy and what can be disclosed outside the office (p. 32)
- The development of the ministry's quality assurance functions should be expanded so that it is ready to take on the oversight function currently fulfilled by the Representative (p. 37)
- In order to address a “culture of blame”, the Legislature should consider changes to privacy restrictions that surround cases, so as to permit more fulsome debate in the Legislature (p. 40)
- The chair of the Standing Committee and a designated member from the Opposition should be given the authority to request confidential briefings seven days before a high-profile case becomes public (p. 40)

- The goal of the next Representative should be to advise and overview the development of the quality assurance and public information service in the ministry (p. 41)

The Plecas report goes on to offer three options for moving forward, ultimately recommending what Mr. Plecas described as “*option three*” – a multi-year strategic plan:

There are eight components to this strategic plan I would advise you to consider:

1. *Rethink the management model;*
2. *Strengthen staff resources;*
3. *Restore MCFD's programs;*
4. *Respect and support professional decision making and professional growth, including technological tools;*
5. *Streamline policy, and move practice towards evidence-based, structured delivery;*
6. *Fully implement Quality Assurance;*
7. *Provide appropriate and effective oversight; and*
8. *Put appropriate financial resources in place.* (p. 44)

After a fairly detailed breakdown of actions that should be taken in years one to four, the Plecas report states:

*View this four year overview as a roadmap for general direction, not a blueprint. The detailed planning will adjust as these directions are refined, but they are not, nor should they be, considered prescriptive recommendations. **Internal** experts need to make these plans and have them approved, and be held accountable for the outcomes. [emphasis added]*

Provincial Government Response to the Plecas Report

Immediately after the release of the Plecas Report, government moved to endorse it, and establish a “transition team”. This is despite the fact that the report was clearly entitled “Part One” and specifically contemplates a further report.

In a public statement dated Dec. 14, 2015, Minister Cadieux said:

I want to thank Mr. Plecas and his team for this very thorough and in-depth report. Its contents represent the collective wisdom of a number of experts in the fields of law, government administration and child welfare. Their advice – while independent of government – was informed, in part, by access to any government official and document they requested and I’d like to also thank ministry staff for their participation in this process.

The report offers a helpful retrospective of what’s been going on in the Ministry of Children and Family Development since its inception. It shows how the past three years have seen the ministry chart a course that brings us closer to Mr. Hughes’ initial vision for MCFD. It also outlines the struggles we’ve faced, including the tragic and high-profile cases that have recently shaken the public’s confidence in the work that we do.

Appropriately entitled Decision Time, the report illustrates some of the key choices we must make if we are to address those challenges and continue moving our system forward.⁶

Minister Cadieux indicated that Mr. Plecas, having drafted the report, had been hired to follow up with another report and retained him to oversee the transition team. In email correspondence to MCFD staff dated Dec. 14, 2015, Deputy Minister Mark Sieben stated:

The intent of the review was to bring a clear and objective eye to the legislation, policy, practice and standards which guide B.C.’s child welfare system – to learn from this tragic case, and from the experiences of child protection and other professionals who live and breathe this incredibly complex work each day – and to offer recommendations aimed at strengthening the system itself . . .

First, I want to say that this is a very thoughtful report that speaks to the complexity of child protection work and the ministry itself. It outlines both our successes and our challenges, and offers advice in the form of a roadmap for a four-year, multi-faceted strategic plan with milestones to guide budget allocations and assess progress. It recommends spending the first year engaging with staff and stakeholders to fully develop the plan, and identify milestones that address the practice and policy areas identified in the report.

⁶ See <https://news.gov.bc.ca/releases/2015CFD0059-002095>

In terms of next steps, I will be establishing a ministry transition team early in the New Year. This team will be made up of individuals with the experience and capacity to drive the change that's needed, and will include a dedicated Transition Manager to ensure the required level of coordination and cooperation. Once established, the team will take the next few months to consider the advice in the report and how best to proceed, understanding that any response needs to reflect the changes to the children, youth and families we serve, to see where we need to focus our interventions. Keep an eye out for further communication on the transition team in January.

On Dec. 15, 2016, Minister Cadieux indicated in a radio interview that the report provides a very thorough outline of where the ministry needs to go, and that it was now government's job to take the guidance from the report and create the strategic plan to get there.⁷

On Feb. 9, 2016, the Speech from the Throne stated that *"The Ministry of Children and Family Development has begun the work of responding to the Plecas Report."*⁸

On Feb. 16, 2016, in the B.C. Budget Speech, Finance Minister Mike de Jong said: *"This budget provides an extra \$217 million over three years for the Ministry of Children and Family Development to go towards helping our most vulnerable children and families, including implementing recommendations in the Plecas report."*⁹

It remains unclear who is in charge of leading this transition team, and any implementation process it is undertaking.

⁷ <http://www.cbc.ca/news/canada/british-columbia/programs/theearlyedition/minister-stephanie-cadieux-responds-to-plecas-report-1.3366714>

⁸ See https://www.google.ca/?gws_rd=ssl#q=speech+from+the+throne+bc+2016

⁹ See http://bcbudget.gov.bc.ca/2016/speech/BudgetSpeech_2016.pdf

Aboriginal Responses to the Plecas Report

At the same time as the provincial government moved to immediately praise the Plecas report, a cross-section of Aboriginal leadership condemned it.

A core critique of Aboriginal leadership was that the Plecas report, while making sweeping reform recommendations for MCFD, was prepared without any engagement or consultation with First Nations. This is despite the fact that Aboriginal children comprise the substantial majority of children in care. Similarly, Aboriginal leadership questioned the Plecas report's comments and recommendations regarding independent oversight of the ministry.

Illustrative examples of the perspectives of Aboriginal leadership include:

- *The other report* – Plecas Review, Part One: Decision Time, *commissioned by the Christy Clark government and written by a former provincial bureaucrat – is the polar opposite of the Truth and Reconciliation Commission report. In the way it was produced and in its content, it harkens to another era when our children were forcibly removed from their homes and put into the residential school system, and where our land was taken and our culture was outlawed, with our well-being a distant thought. Decision Time proposes sweeping changes to child welfare in this province, including ending vital independent oversight. These recommendations were developed with no engagement of First Nations, despite the fact that fully 60 per cent of the children in care in British Columbia are Aboriginal.* – **Open letter from the Union of BC Indian Chiefs to Premier Clark and Minister Cadieux, Dec. 17, 2015.**
- *Unfortunately, Mr. Plecas presents a wide-ranging, biased survey of child welfare and politics, including a unilateral public assessment of the value of independent oversight and the performance of the current Representative for Children and Youth. We find this attack on this valued oversight role to be deeply offensive and inappropriate. Let us be clear in stating that we fully support the important work of the Representative for Children and Youth . . .*

We will also be writing to the Clerk of the Legislative Assembly to indicate that we hope the utterly unfair review of the performance of the Representative can be withdrawn fully and that should such a review be conducted, it should be done in the proper forum, before the Standing Committee on Children and Youth that the Representative has worked closely with for 9 years and has appeared before in excess of 30 times. – **Open letter from the First Nations Leadership Council to Premier Clark, Dec. 14, 2015.**
- *The Plecas Review was prepared without consulting First Nations in British Columbia. As the report describes, 60.6 percent of the 7,200 children in care across British Columbia are Aboriginal. This report does not account for or reflect First Nations perspectives and vision of services for children, youth and families in British Columbia. The exclusion*

of First Nations in the development of this report further contributes to the erosion of First Nations confidence and trust in the Ministry of Children and Family Development (MCFD). – Media release by the First Nations Health Council, Dec. 15, 2015.

Delegated Aboriginal Agencies – who similarly were not engaged in the preparation of the Plecas report – also raised concerns:

It is shocking that in 2015 the Province thinks it is appropriate to develop and advance sweeping recommendations that will impact Aboriginal children and youth with no engagement with First Nations, or the Aboriginal agencies working on the frontlines. The very fact that this has occurred demonstrates an on-going pattern of dismissiveness of Aboriginal peoples, and deeply troubling attitudes towards our children and families. This is compounded by the fact that Decision Time makes the immoral and impoverished assertion that our starting point should be acceptance of the inevitability that children will die and be abused. Our families and communities will never accept that. To surrender to such ugly and defeatist patterns of thought is in itself a harm to children, and a betrayal of the trust we owe them . . .

Decision Time needs to be put aside. There are already numerous data and information based recommendations from the Representative for Children and Youth that must be implemented, including the focused investment of resources into the system. Further, a climate of constructive partnership must be cultivated where we work together in new ways with families and communities, with strong independent oversight that helps us all stay focused on the needs of children in ever greater ways. – Letter from Kw'umut Lelum Child and Family Services to Minister Cadieux, Dec.17, 2015.

Justice Ted Hughes was clear in his 2006 report on B.C.'s child welfare system¹⁰ about the need for Aboriginal people to be included in the type of review undertaken by Mr. Plecas: *“Aboriginal people want and need to be actively involved in developing policies that affect them, and in delivering services to their communities.”*

The Plecas report suggested that it did not comment on the specific – and paramount – issue of Aboriginal children in care because that will be addressed by Grand Chief Ed John, Special Advisor to the ministry. However, the mandate of Grand Chief John does not include addressing this broad scope of matters. A letter from the First Nations Leadership Council dated Dec. 14, 2015, which was signed by Grand Chief John along with other leaders, states the following:

The report references Grand Chief Edward John being brought on “to help find ways to address the over-representation of Aboriginal children in care.” We find this to be an attempt by Mr. Plecas to minimize a need to consult with First Nations on these important issues by offloading and mischaracterizing Grand Chief Edward John’s important role as Special Advisor.

¹⁰ BC Children and Youth Review, Hughes, E.N. (2006)

We must point out that Grand Chief John has our support in his role as a Special Advisor to the Ministry of Children and Families and his mandate to specifically:

- *Provide a focused role on creating permanency for Aboriginal children in care, particularly those in care through continuing custody orders (in care until reaching the age of majority);*
- *After the release of the Council of the Federation report, assign follow-up for British Columbia (encourage national-level leadership and facilitate provincial level discussions); and*
- *As necessary, assist the MCFD Minister in developing advice to cabinet members on these areas.*

Representative for Children and Youth Questions and Concerns About the Plecas Report

I have significant questions and concerns about the Plecas report and its pending implementation.

A core concern has been the fact that, to my knowledge, Aboriginal groups, stakeholders, my Office and other communities of interest that could provide valuable information were not consulted or interviewed during the development of the report. The terms of reference of the Plecas review were changed and extended at least three times without input or review from those with significant involvement in services to children, youth and families, and without the input of J.P.

I also have had considerable concerns about the fact that the Plecas report made recommendations respecting the Office of the Representative for Children and Youth without meaningfully consulting my Office. Further, the Plecas report was issued without the correction of several factual inaccuracies that Mr. Plecas had full notice of, as I had pointed them out when I was given an opportunity to review the report very shortly before its public release. I include the record of exchanges on these matters where I tried, without success, to correct inaccuracies in the report prior to public release (see Appendix B).

I will note that, following the release of the Plecas report and the public expressions of concern, Mr. Plecas provided a letter to the ministry on Dec. 18, 2015, which revisited the recommendation related to my Office. Mr. Plecas stated:

Minister, I have learned over the years that there are times when one should be prepared to engage in "serious second thought" and the reaction to my report has resulted in me doing just that in relation to the mandate question.

While I might be optimistic that threshold necessary for a change in mandate could be achieved within two years, it is now clear to me that much more will need to be done to strengthen public confidence in the Ministry before that evolution can be considered. As a result, I have to concede that the two-year timeline suggested in my report is too ambitious. It will be for the Standing Committee to determine when they will wish to consider the matter pursuant to the statutory responsibilities assigned to them...

While the Plecas report itself was made widely available to the public, government has not, to my knowledge, made public this subsequent letter from Mr. Plecas.

Over the last few months, I have been reflecting on the changes that the ministry appears to be embarking upon, using the Plecas report as a roadmap. I am concerned that this roadmap has similarly not been subject to consultation with Aboriginal groups, stakeholders and other communities of interest. There is no clarity about what is being "actioned."

It is widely accepted that a key foundation of effective systemic reform involves extensive and diverse public and stakeholder consultation. The *Gove* (1995) and *Hughes* (2006) inquiries in B.C., the *Realizing a Sustainable Child Welfare System in Ontario* (2012), and the *Alberta Ministerial Roundtable on Investigations and Reports of Deaths and Serious Injuries* (2014) each involved contributions from hundreds of interested and concerned parties, including extensive input from Indigenous communities and organizations. More than 1,000 people provided input into the United Kingdom's *Munro Review of Child Protection* (2011). This included contributions by 250 young people. The *Report of the Protecting Victoria's Vulnerable Children Inquiry* (2012) in Australia consulted with hundreds of people including significant numbers of young people and members of Indigenous communities.

It is almost unheard of for any contemporary review not to include the involvement of a wide range of people. Extensive public input is considered the current national and international standard for reviews of this nature, even in circumstances in which there is a short reporting timeframe. For example, the consultation for the Alberta report took place over two days and involved almost 600 people. Anything less than widespread consultation is widely considered to be outdated, ineffective and exclusionary.

I am also concerned about the genesis, empirical basis and substantive validity of at least some of the recommendations set out in the Plecas report. I have serious questions as to whether the ministry has itself truth-tested these conclusions and recommendations before implementing them.

Also troubling is the lack of clarity as to who, precisely, is making implementation decisions in the ministry at this time. It is not clear whether these decisions are being made by Mr. Plecas, the deputy minister or other parties.

For example, it is not clear to me whether the ministry does, in fact, intend to introduce "contrarian" positions, or even whether the ministry has undertaken any analysis as to the benefits of such a position in the context of child protection. The research that my staff has undertaken to date raises significant questions about the benefit of such a position, recognizing that the child protection context is quite different from police investigations (from which Mr. Plecas appears to draw this suggestion).

I have already expressed concern about the Plecas report's suggestion that legislation should be enacted to relax privacy protections for children and their families in order to enable cases to be debated in the legislature – and that this would somehow alleviate what the report called a "culture of blame." In February 2016, I wrote to the Select Standing Committee on Children and Youth with regard to this proposal:

If the Committee considers this issue, I encourage the Committee to take all necessary procedural steps, including hearing from a variety of witnesses, to ensure that any recommendation it makes on this issue is fully thought through and studied in all of its implications, including assessing whether the author's reference to the U.S. system might be an instance of "apples and oranges" given

the subject matter and the differences between our two systems. Subject to further analysis and discussion at the appropriate time, I will simply state in brief here that, from a child welfare perspective, I would have serious reservations about any legislative change that would make the lives of children and families fodder for public legislative debate, particularly so where an internal or external investigation is underway and has not yet determined what may or may not have gone wrong. If confidential briefings are to occur, the emphasis must be on protecting privacy in any and all public statements until after internal and external processes (which in some cases may even include criminal investigations) have run their course.

Further, I am also concerned about precisely how the Plecas report came to its specific recommendations regarding budget and staffing. While I have previously made clear that I support budget and staffing increases, most notably in my report *The Thin Front Line* (October 2015), I believe it is important that any such recommendations and changes be based on solid analytics, which the Plecas report does not appear to provide.

Another serious concern about the Plecas report is its comments concerning the "culture of blame". More specifically, the report suggests that when something goes wrong front-line staff and senior staff are blamed. It adds that when MCFD Executive learn of a difficult case through external agencies or the media, *"the hunt is on for who made the mistake and who to blame."* No evidence is offered in support of these conclusions, and they are not at all consistent with the actions I have seen the ministry take in my Office's work overseeing the delivery of designated services. These are, therefore, rather dubious conclusions and not something that anyone should seriously consider as a basis upon which to make changes to the child-serving system, at least without considerable further analysis and validation. Social workers play an extremely important role in our system and have jobs that can be very difficult. It does them no service to suggest (apparently without any empirical analysis) that they are likely to be targets of "blame".

Finally, there is legitimate concern that what started as an *"independent review"* by a third-party consultant has somehow morphed into a director's case review which, in turn, has become a *"roadmap"* to revise the entire child-serving system before that initial case review has even been completed. That concern is exacerbated by the fact that this review lacked the openness and comprehensiveness of prior reviews or commissions of inquiry dealing with child protection issues (i.e., the *Gove Inquiry* and the *Hughes Review*), and did not engage crucial voices and actors.

Representative's Correspondence with Committee

Following the release of the report, I wrote to the Select Standing Committee on Children and Youth to ask if it contemplated a review of RCY in light of Mr. Plecas's findings (see Appendix C). The Committee is an important part of accountability and collaboration for children and youth services in B.C. The Committee was recommended by Mr. Hughes in his 2006 review, in which he wrote:

"I believe that the establishment of this standing committee will help Members of the Legislative Assembly to understand that their relationship with the Representative should be a collaborative one. It should also help to develop a greater awareness and understanding among legislators and the public, of the child welfare system in our province. It is my fervent hope that it will encourage Government and the Opposition to work together to address some of the very real challenges facing the child welfare system now and in the near future."

Since being appointed to this role in 2006, I have met with the committee more than 30 times (see Appendix D). There has been consideration of a range of issues, including meeting with senior representatives of the ministry as recently as 2015, to consider performance and outcomes and to bring external witnesses and a broad range of stakeholders into the process. The Committee has thoroughly examined matters in a collaborative and positive manner and provided a venue for discussion and accountability that is most welcome and considered central to any major initiative, in my view.

The Plecas review appears to have by-passed this process completely and, in preparing a new blueprint for the ministry, appears to have not allowed for committee members to perform their important role in creating the conditions for stable and scrutinized improvements – elements that Mr. Hughes recognized were needed in 2006 – non-partisan approaches and explorations that might support long-lasting solutions.

Representative's Efforts to Obtain Documents

In the last few months, I have made several attempts to obtain information from the ministry regarding the Plecas report findings and related ministry analysis and implementation. Those efforts have, unfortunately, been unsuccessful. After several informal attempts failed, I made a formal request to Minister Cadieux for production of documents pursuant to my statute and narrowed the scope of the request to coincide with several key areas under audit and review. Legal counsel for the ministry responded by challenging my authority to obtain such information. Following further exchange of correspondence between legal counsel, it has become apparent that the ministry is not prepared to provide that information unless and until a court so orders (see Appendix E for a record of correspondence regarding these matters).

The refusal of the ministry to provide the requested information has placed me in a difficult position. In addition to my own view that I have a right to "look under the hood" to see what, if any, foundation exists for the ministry's acceptance of various proposals, I have received a great many inquiries and complaints from third parties, including Aboriginal groups, asking why I am not doing more to provide oversight (or at least know what is going on), as the ministry appears to be embarking upon a major transformation to the child-serving system. I have only been able to explain that I have tried but have been unable to receive such information.

I have naturally been forced to give considerable thought to the question of whether I should commence litigation to compel the production of documents to help assess the evidentiary foundation the Plecas report and the ministry are relying upon as they proceed with their implementation plan. As members of the Legislative Assembly will be aware, I was forced into this position several years ago, at which time the court found it necessary to state as follows:

... the general rule in Canada is that legal rights are enforceable by courts. The rule of law is a fundamental premise of our legal and democratic system. It means that no one is immune from the law or excluded from the benefit of the law. For this reason, the notion that anyone, especially persons holding high public office, can breach their statutory duties without being accountable to a court of law is a highly exceptional proposition. The RCYA [RCY Act] does not bear an interpretation that ousts the court from its ordinary role in providing a remedy for breach of the law.¹¹

¹¹ 2010 BCSC 697 at para. 74.

While government has argued to the contrary, I am of the view that I have a legal right to all background information that informed the Plecas review and government's acceptance and implementation of the review. The government knows as well as I do that for the Representative to advance and litigate the right to that information in court would take considerable time and money, during which period government would inevitably move ahead with its implementation of the Plecas report, the current Representative's term of office (November 2016) may expire and the time may arrive for the mandate of the Office itself to be reviewed by the Standing Committee (April 2017).¹²

Thus, while I am not prepared to rule out litigation as circumstances unfold, and despite the difficult circumstances in which I find myself, I have concluded that the wisest and timeliest course of action for the present – the course of action that would best serve the interests of vulnerable children – is to write this Special Report which outlines my concerns.

¹² The Standing Committee's review must be complete by April 2017: *Representative for Children and Youth Act*, s. 30.

Findings

Having considered all of the above, I make the following findings and draw them to the attention of the Legislative Assembly:

1. The Plecas report was originally described as an independent review of a particular case (J.P.), which could potentially provide lessons and guidance for broader policy and operational changes. Somehow, the cart got placed before the horse, and the “Part One” report – setting out sweeping recommendations for policy, program and legal reform – was published *prior* to an examination of the J.P. case itself.
2. The Plecas report was prepared without meaningful consultation with Aboriginal leadership, communities, children or youth, or my Office. Based on the experience in every other major jurisdiction in Canada and abroad, substantial engagement and an open process of participation would appear to be more durable as an approach to change. An insider approach to reform in which recommendations are developed and adopted without scrutiny even by the existing oversight entity appears to be short-sighted and perhaps unnecessarily secretive in an area requiring openness and transparency.
3. While I do not doubt that some of the conclusions and recommendations in the Plecas report are meritorious, there are also others that do not appear to be so. The absence of consultation with Aboriginal groups, my Office, stakeholders, and other communities of interest – together with the refusal to provide background information – makes it very difficult to credibly determine which recommendations are meritorious and which are not.

Recommendations

In light of the foregoing, I offer the following recommendations, which I hope may be of use to the Legislative Assembly, the Select Standing Committee and the ministry as a path forward is charted:

1. That the ministry pause any implementation of the Plecas report that may be occurring and provide an opportunity for Aboriginal groups, stakeholders, and other communities of interest to provide comments on the report and recommendations through a transparent consultation process, including posting feedback on a publicly accessible website. This is a process that could be done relatively quickly but it must meet meaningful standards for engagement with Aboriginal peoples.
2. If the Plecas report findings and recommendations are not required to be informed by and based upon a review of the J.P. case, then the terms of reference should be amended to clarify that, and consideration should be given to whether there is, in fact, any purpose for Mr. Plecas to complete a review of that case.
3. The ministry should clearly and publicly indicate whether materials in the possession of Mr. Plecas are considered documents that are in the possession or control of the ministry for the purposes of the *Freedom of Information and Protection of Privacy Act*, and what steps have been or will be taken to ensure confidential documents are managed with the same degree of security as would be required when in the possession of ministry staff.

Appendices

Appendix A

Request to Change the Terms of Reference for the Plecas Review



Ref: 224908

Bob Plecas
Child Protection Practice & Policy Review
PO Box 5262
Victoria BC V8R 6N4

Dear Mr. Plecas:

Thank you for your letter of October 7, 2015, updating me on the status of the review regarding the JP case, which includes a request for an extension of time to complete the report and an amendment to the Terms of Reference established.

I am agreeable to an extension of the timeline, given events have unfolded that were not foreseeable when the review was commenced. I propose the interim report be received by my office on January 18, 2016, with an expectation I make the report public by January 28th. I would appreciate a meeting regarding progress in December, during which we can further discuss reasonable expectations for when a final report can be produced.

The changes you propose to the wording of the Terms of Reference are acceptable, and are in keeping with the original purpose and intent of the review. As you move forward, I may request greater attention or focus on certain areas arising from your work or the scope of this review.

Let us hope for an expeditious resolution to the matters affecting the timely completion of the final review. I look forward to receiving your interim and, in due course, final report.

Sincerely,


Stephanie Cadieux
Minister

Ministry of
Children and Family
Development

Office of the
Minister

Mailing Address:
Parliament Buildings
Victoria BC V8V 1X4

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Victoria

CHILD PROTECTION PRACTICE & POLICY REVIEW	
BOULEVARD P.O. BOX 5282 VICTORIA, BC V8R 6N4 TELEPHONE 250-595-7777	

Minister Stephanie Cadieux
 Minister of Children and Family Development
 Legislative Assembly of British Columbia
 Victoria, BC

October 7, 2015

Dear Minister Cadieux:

Re: Plecas Policy, Practice and Legislation Review:

Request for extension of time,
 For submission of an Interim and Final Report,
 And, a proposed amendment to Terms of Reference.

On August 21, 2015 I wrote to you concerning the possibility of a delay of my report being submitted because of proceedings before the Freedom of Information and Privacy Commissioner.

When we met on September 10, 2015 to discuss my review, I indicated that I would be seeking an extension of the time necessary to complete my report to you, given that we had not yet been able to access and review the file materials relevant to a key aspect of the mandate that I was asked to undertake.

As that the issue of access to those materials remains unresolved, and now awaits not only the report of the Freedom of Information and Privacy Commissioner, but also, because the lawyer for the mother in the JP Case has sought injunctive relief from the Supreme Court of BC to effectively stop my review from proceeding, I am formally requesting an extension of time to complete the report, and that the report be submitted in two stages.

Further, I am asking that you consider an amendment to my Terms of Reference that I hope will further clarify and may assist in resolving outstanding matters.

As you know, the mandate assigned to me contemplated three basic things:

- 1.) A comprehensive examination of the ministry's legislation, policy, standards and practice in child protection matters, comparing what was the situation during the period the JP Case was active (2009-20012) with what is the situation today in the fall of 2015.
- 2.) An assessment as to whether, in the context of the JP Case, the actions of ministry staff and others, were consistent with the expectations of the legislation, policy, standards and practice that were in place at the material time.
- 3.) Based on the findings of the above make recommendations for improvement.

Over the course of the past two months I have been able to do a great deal of work associated with the first of those responsibilities, although some considerable time has been spent on dealing with the actions noted above. This has included extensive research, and interviews with a wide range of individuals and groups who have been very helpful offering insights and suggestions regarding how elements of legislation, policy, standards and practice can be improved.

With respect to the second aspect, progress has been delayed as noted above.

When my mandate to consider these matters was announced on July 24, 2015, you indicated that I was to provide my Final Report no later than October 13, 2015 and that the Report would be made public the following week. At the time, those dates seemed reasonable. They no longer do. As uncertainty remains regarding access to materials relevant to the specific case included in my Terms of Reference, it appears it may be some time before that element of my responsibilities can be completed. The timing may also be delayed by the availability of the policy expert, recommended to the Review process by the Child Welfare League of Canada, due to work commitments. I believe these factors can be managed within my proposal set out in this letter.

I am proposing that the timelines for my report be revised to require me to provide you with an Interim Report no later than early 2016, allowing for time to provide some clarity to the processes considering access to the JP Case files.

The Interim Report will speak to the larger context of the comparative analysis of applicable legislation, policy, standards and practice outlined in point 1.), above, and would set out recommendations for the improvement of Ministry, and other, systemic processes.

A Final Report will, subsequently, be completed once we have had an opportunity to review materials relevant to the specific case that we have been asked to examine. My assessment, at this time, is that the file review will take approximately six weeks, and any associated research or interviews I would require, would take only a few additional weeks.

I am also suggesting you may wish to consider a refinement of my Terms of Reference that may provide greater clarity regarding what my Review is, and is not, about.

Much of the delay in this matter has resulted from an apparent misperception that what I have undertaken is intended as some sort of review with respect to the decision of Mr. Justice Walker in the JP matter. That has never been the case, and both of us have made that point clearly and publically. That decision is subject to an appeal and consideration of that matter is for the Court of Appeal, not for me. My role is very different. If there are lessons to be learned from what happened in the JP Case—and I believe there are likely several—then my role is to utilize those lessons to help inform better legislation, policy, standards and practice with the objective of improved child protection in British Columbia. In other words, going forward, my Interim Report will be reviewed through the lens of the specific case study to determine if there are specific recommendations that can be further made in the Final Report, bringing these processes together to a logical conclusion, albeit at a future and later time than originally contemplated.

Clearly, my recommendations are to be prospective in nature and character.

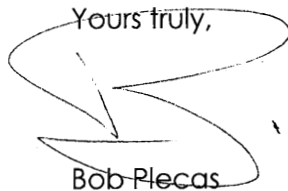
While I, from the outset, have understood this to be my mandate, you may wish to consider an amendment to the first of the objectives set out in my Terms of Reference to help address any perceived ambiguities regarding my role. What I am suggesting is this:

“Examine the child protection legislation, policy, standards and practice and actions taken in the JP Case by ministry staff, supervisors and legal counsel, contracted to represent the Director, under the Child, Family and Community Service Act (CFCSA) and provide prospective recommendations regarding how any errors or omissions evident in the case can best be minimized or avoided in future child protection matters.”

My hope is that this clarification as to the prospective nature of any recommendations that I may make will permit us to get on with this very important work.

Should you have any questions regarding what I have proposed here I would welcome the opportunity to discuss this with you.

Yours truly,

A handwritten signature in black ink, appearing to read 'Bob Plecas', written over a large, stylized, circular scribble.

Bob Plecas

Child Protection Legislation, Policy, Standards and Practice Review

cc: Deputy Minister Mark Sieben

cc: Don Avison

Appendix B

Correspondence re: RCY's Findings of Errors in Plecas Report Before its Release



December 3, 2015

Ref: 21493

Honourable Stephanie Cadieux
Minister of Children and Family Development
Room 236, Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Minister:

I received an email from Mr. Plecas earlier today advising me that he intends to submit a copy of his report to government tomorrow, for public release on December 15, 2015. He offered to provide me with a briefing on December 14.

That email made no mention of this office being discussed as one of the subjects of review.

A subsequent discussion between my deputy and yours brought to light that Report intends to make comment and/or recommendations regarding the role of the Representative for Children and Youth. So far as I am aware, that is not an issue that was included in the terms of reference assigned to Mr. Plecas.

I am concerned to ensure that any comments directed at the operation and mandate of this office are within mandate, fair and accurate. While it is open to me to comment after the public release of the report, I prefer to draw the reviewer's attention to any errors or omissions concerning this office prior to its release, all of which is consistent with the requirements of a professional report marked by administrative fairness, and with the basic requirement of courtesy.

To that end, I formally request that you provide a copy of the report to me tomorrow as soon as you have received it.

Yours truly,

Mary Ellen Turpel-Lafond
Representative for Children and Youth

pc: Mark Sieben, Deputy Minister
Ministry of Children and Family Development

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December 8, 2015

Ref: 225764

Mary Ellen Turpel-Lafond
Representative for Children and Youth
400 - 1019 Wharf St
Victoria BC V8W 2Y9

Dear Mary Ellen Turpel-Lafond:

Thank you for your letter of December 3rd, 2015, regarding the report submitted by Mr. Plecas.

I received Mr. Plecas' report on December 4, 2015. Consistent with the Terms of Reference for Mr. Plecas' review, you will receive a copy before it is publicly available. I understand Mr. Plecas has been in touch with you to offer a briefing in advance of the report becoming publicly available.

I intend to make the report available on an embargoed basis to certain Members of the Legislative Assembly (MLAs) and have asked Mr. Plecas to prepare to meet with them in advance of the public release. I believe it is appropriate for me to share the report with some of my colleagues in the Legislature in advance of sharing with others including Independent Officers. I commit to sharing the report on an embargoed basis with your office shortly after making the report available to the MLAs Mr. Plecas will meet with. I anticipate the embargoed report can be made available to you noon, Friday, December 11, 2015. Should that change for some reason, I commit to advising you as soon as possible.

Thank you again for giving me the opportunity to respond.

Sincerely,

A handwritten signature in black ink that reads "Scadieux".

Stephanie Cadieux
Minister

pc: Mark Sieben, Deputy Minister

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Children and Family
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Frank A.V. Falzon, Q.C.**Barrister and Solicitor*

December 11, 2015

UrgentTo: Don Avison, Q.C.
Barrister and SolicitorFm: Frank A.V. Falzon, Q.C.
Barrister and Solicitor**Re: Report**

Earlier this afternoon, I sent an email notifying you that the Minister had provided the Representative for Children and Youth with a copy of your client's draft report, and that there are significant factual errors and omissions that the Representative would like to see corrected as they pertain to the report's description of her office, before the report is disclosed any further.

The factual errors my client wishes to bring to your attention are as follows.

1. Page 34, the sentence - "Communications between the Representative's office and MCFD's Deputy Minister's office have broken down completely at times"

This is not accurate. It is in the nature of any interaction between an independent officer of the legislature and a body subject to oversight that differing views and disputes will arise from time to time. However, at no time have there been gaps in communication.

In terms of MCFD Deputy and Executive team, for long periods of time MCFD assigned the Chief Operating Officer, Mr. Sieben, to be the lead in place of the Deputy as she worked internally on practice reform. Senior leadership from RCY had weekly communication without any period of interruption in 9 years. Later, MCFD appointed Mr. Derek Sturko to replace Mr. Seiben and daily and weekly discussions occurred with him as the assigned lead as the Deputy would not communicate. With 15,000 advocacy cases, there is daily communication with MCFD, CLBC, delegated aboriginal agencies and others.

The Representative's Office has consistently communicated and would never fail to do so in the context of discharging our legislative function and program responsibilities. To suggest otherwise is simply not true.

2. Page 34, the sentence: "After a protracted battle for access to legal documents, the two most important officials charged with providing oversight to the children protection system in BC did not speak for more than 18 months"

There was no 18 month period of non-communication. The Deputy was absent from her duties in South Africa and delegated to the Chief Operating Officer (COO) responsibility to act in her absence and to interface with Representative's Office. Communication continued with Minister, COO and all senior officials as well as field staff. This statement is therefore dramatic and misleading. You may wish to consider whether it

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*Denotes Law Corporation

might fall into the category of getting “caught in a narrative” referenced earlier in your client’s report (p. 29).

The reference to a “protracted battle” is also inaccurate. Your reference here can only be to *Representative for Children and Youth v. British Columbia (Children and Family Development)*, 2010 BCSC 697. With regard to your use of the term “protracted”, quite the opposite is true. The matter was expedited. The Petition was filed May 4, 2010. It was heard May 13, 2010. It was decided May 14, 2010. As to the use of the term “legal battle”, a more accurate statement might reflect that it was nothing less than a last resort to the Courts to enforce a clear statutory obligation the legislature had imposed on the government. The reader of your report might fairly have their attention drawn to this paragraph of the Court’s judgment:

...The rule of law is a fundamental premise of our legal and democratic system. It means that no one is immune from the law or excluded from the benefit of the law. For this reason, the notion that anyone, especially persons holding high public office, can breach their statutory duties without being accountable to a court of law is a highly exceptional proposition. The *RCYA* does not bear an interpretation that ousts the court from its ordinary role in providing a remedy for breach of the law.

The report also does not acknowledge that after this decision, and despite the Representative’s legal entitlement to the documents, a protocol was - with the able assistance of Mr. Hughes who subsequently complimented both parties publicly for their cooperation - put in place for access to Cabinet documents. This protocol has guided all matters to date, with courtesy, open communication and respect between RCY, MCFD and Attorney General of BC.

3. **Page 35: “Sadly, the relationship between the Representative and the Ministry has become strained. Persistent tension permeates everything that involves the two organizations that, at times, compromises their respective capacities to elevate the quality of service to which they are both committed”**

This is a dramatic statement that is not factually accurate. The relationship is a strong one and there is respect and support for the Ministry to succeed. While such relationships are not of the calibre of “friendship”, they should not be so given the institutional relationships and role. They are nonetheless professional and courteous. There is extensive daily collaboration in all service delivery areas and at the senior level, including Deputy and Director of Child Welfare with the senior Management of the Representative’s Office, including the Representative. During the 18 month period when Steven Brown was Deputy the same situation pertained.

There are difficult topics discussed and disagreements at times, but “persistent tension” is simply not true. MCFD and RCY have undertaken several joint initiatives, including in 2013 a joint policy forum in mental health, adoptions since 2014 and in 2015 organized a successful Aboriginal permanency forum in Nanaimo that involved staff

from all levels and was collaborative and included the Provincial Director and Deputy Representative and the Deputy and Representative as well as the Minister and Representative both presenting together and working in a public fashion on common issues. In this regard, the suggestion that only now is “light breaking through the clouds” does not paint an accurate picture.

There is also no evidence that the dramatic statement about tension has “compromised” the quality of service. There is no evaluation of this and no evidence to support this. In fact, there are more than 15,000 advocacy cases and most of them are resolved, even the most complex cases where issues are difficult and may span many years—for example, children and youth with special needs between ages of 19-24 where MCFD supported an expansion of jurisdiction to advocate and RCY has worked in a highly collaborative way on this matter.

4. **Page 35: “The Representative has published 29 MCFD related reports over the last nine years. These have contained 154 recommendations, 129 of which were directed at the Ministry. The recommendations are generally broad, and when examined more closely, disclose something more in the nature of 572 actionable recommendations. The Representative views these as details; the Ministry views them as recommendations. For implementation reasons I believe they are recommendations. It should also be noted that many of the reports before the Representative also had this characteristic, but it comes to field implementation it is the detail that changes what is there now or adds another layer of policy”.... But the sheer volume and constant nature of these recommendations is overwhelming”**

The paragraph above glosses over a great deal.

First, several reports have been prepared collaboratively with other officers, such as the Ombudsperson (1 report), the Information and Privacy Commissioner (2 reports) and the Provincial Health Officer (4 reports).

Second, the Representative takes care to make focused recommendations and these are work-shopped with the Ministry staff in advance. The reports go through a thorough administrative review process and the ministry often asks for and receives recommendations they feel would be helpful to them.

Third, annual reports and service plans are statutory requirements. The *Hughes* Progress Reports stand on their own. Also, audits of programs such as plans of care, extended family placements and adoptions programs represent the only rigorous quality assurance review done in some of these program areas for more than a decade. Many areas of MCFD operations had never been reviewed or evaluated and there are areas that the Representative has not covered to keep these matters more manageable, such as child care.

Individual injury and death reports are not matters entirely within the control of the Representative. For example, there have been two domestic violence homicide reports

involving four children. There could have been 18 such reports, but in the interests of picking cases and producing public reports of value for learning, these were carefully reviewed and evaluated. As this review gives no context for these paragraphs and shows no insight into the work the Representative's office, the sweeping opinions statements do not offer the reader an accurate summary.

Finally, the quoted statement offers no comparative basis to assess the descriptor of "sheer volume". It is observed that the Ombudsperson in a single report on seniors care made 176 recommendations, more than all of the reports of the Representative combined.

5. **Page 35: "The advocacy role sometimes means that the Representative is focused on rallying against the very people whom she has just charged with implementing her recommendations".**

My client takes strong issue with this characterization of her advocacy role. The representative is not "rallying" when she is addressing the effectiveness and responsiveness of the services for children and youth and is also engaged with children and youth to advocate for them. Further, the occasions when the advocacy role requires public comment are rare when considered against the 15,000 advocacy files the office has taken on. The tone of this statement is improper, and we say, with respect, reflects a lack of proper understanding of the nature of the advocacy function, how it operates in the real world, and the fact that the role was designed by Hughes to live together, and does live together with the Representative's other roles.

This kind of bald characterization has the potential to damage the reputation of the Representative, and should not be made, particularly as nothing in your terms of reference entitles your client to express these kinds of judgments.

6. **Page 37: "Deaths and serious injuries to children known to MCFD occur rarely."**

Between July 2007 and September 2015 the Representative received 2981 critical injury and death reports, 2077 critical injuries and 814 deaths. In the 2015/16 Fiscal YTD April-October inclusive the RCY has received 380 critical injury and 90 death reports, a total of 470. It would be useful for the reader of your report to have that data, as a reasonable person may differ with your client's descriptor of "rare". That is particularly so as under-reporting of critical injuries by MCFD remains a very serious concern. In the *Paige* Report, the Representative noted receiving only a single reportable circumstance prior to her death, although she did receive a second after her death. Also noteworthy is the steep increase in reported injuries, which likely reflects the completion of ministry reportable circumstance training for social workers across the province in April and May of this year. Death report levels have generally remained steady.

Finally, we note that at page 35, you attribute a quotation to the Representative. No source is provided for that quotation, and we would ask that you provide it. Further, the reader may be led to understand from your use of the quotation that you consulted with or sought to give the Representative an opportunity to comment on the matters pertaining to her office discussed in your report. Please make it clear in your report that you have not done that, and that any comment provided by the Representative was, despite her requests to do so earlier, provided on her own initiative after the Minister provided her with the report on December 11th.

The Representative formally requests that your client amend and revise the report to correct the factual errors we have identified pertaining to the work of her office before the report is shared with anyone else.

If your client is not prepared to make the revisions identified, I ask that you advise me immediately.

Yours truly,



Frank A.V. Falzon, Q.C.
Barrister and Solicitor

CHILD PROTECTION PRACTICE & POLICY REVIEW

BOB PLEČAS | PO BOX 5262, VICTORIA, BC V8R 6N4 | TELEPHONE: 250-595-7771

December 18, 2015

Hon. Stephanie Cadieux
PO Box 9057 STN PROV GOVT
Victoria, BC V8V 1X4

Dear Minister Cadieux

As you know, when Phase One of my Report was leaked to the Vancouver Sun earlier this week it resulted in a disproportionate amount of focus on advice I had provided regarding the longer-term evolution of the respective roles of the Ministry and of the Representative for Children and Youth with respect to responsibilities associated with quality assurance and accountability.

The focus on the mandate issue was unfortunate as it drew attention away from the other ten areas of advice which, in my view, require priority attention.

Those other ten areas of advice include my core recommendation that there is a pressing and substantial need to address specific financial and staff needs. More resources, about 120 staff and \$50 million in the first year of a four year strategic plan. The four year plan is different, but the call for more resources echoes what has been put forward by the Representative, the Opposition by the BCGEU and by others.

There are two other areas of advice that deal with technology improvements and quality assurance. Those matters have also been spoken or written about on occasion, but not in the interrelated way I have handled them.

The remaining 7 are unique and they include:

1. a strategic four-year plan that combines operational planning with government financial commitment, endorsed by both government and the opposition;
2. the development of an Early Warning System in the ministry that will flag potentially serious problems and allow management to provide better incident oversight, direction and support;
3. increased information sharing between the Supreme and Provincial Courts, if cases are being heard in both venues;
4. hiring a new position, called a Contrarian, that will help in detecting, analyzing and understanding nuances, and in some cases help break

- down early formed narratives and further evidenced-based case management;
5. a strengthened office of the Director of Child Welfare, including the hiring of an indigenous/aboriginal assistant deputy minister;
 6. an immediate review of privacy issues to ensure the public has better and more complete information;
 7. a new role for the Select Standing Committee on Children and Youth, allowing members from both sides of Legislature to be briefed on high profile cases;

Those areas should be the focus of attention in the months ahead.

As for the observation I offered that the Ministry should, over time, become more re-sponsible for quality assurance and oversight with the Office of the Representative concentrating on advocacy on behalf of clients, I think it would be helpful to return to the recommendation made by the Honourable Ted Hughes when the office of the Representative was first established.

Recommendation Four of the Hughes Report said this:

“That the Representative for Children and Youth be mandated to monitor, review, audit and investigate the performance and accountability of the child welfare system, but that this mandate be reviewed in five years and revised as appropriate at that time.”

In making that recommendation Hughes observed that the oversight role might not be “a permanent aspect of (the RCY's) mandate” as “it is unusual to have an external body overseeing the functioning of a government ministry.” That role was considered essential, at that time, to “restore public confidence” if conditions had changed sufficiently to warrant a revision to the mandate of the Representative that would focus on “its advocacy functions”.

Ted Hughes certainly anticipated that the respective roles of the Ministry and the Representative would evolve over time driven substantially by the strengthening of the Ministry's own performance measurement, quality assurance programs and public reporting. I know from my conversations with Mr. Hughes that, while he may be disappointed that the Ministry has not yet met the standard necessary to achieve sufficient public confidence, he believes the objectives set out in Recommendation Four of his Report remain sound and would further agree that this remains a matter that the Standing Committee should consider at an appropriate time. The question then becomes when would the appropriate time be for the Standing Committee to consider the mandate question?

Minister, I have learned over the years that there are times when one should be prepared to engage in "serious second thought" and the reaction to my report has resulted in me doing just that in relation to the mandate question.

While I might be optimistic that the threshold necessary for a change in mandate could be achieved within two years, it is now clear to me that much more will need to be done to strengthen public confidence in the Ministry before that evolution can be considered. As a result, I have to concede that the two year time line suggested in my report is too ambitious. It will be for the Standing Committee to determine when they will wish to consider the matter pursuant to the statutory responsibilities assigned to them through section 30 (1) of the Representative for Children and Youth Act. As elected representatives they will determine the process that they would wish to follow but I would anticipate they would hear from the Minister, from the Ministry, from the Representative for Children and Youth and from others who can provide input regarding whether the necessary level of public confidence has been achieved and, further, that appropriate processes have been established to ensure proper quality assurance and oversight. I have taken the liberty of discussing this with Mr. Hughes and we are in agreement that this is a constructive way to move forward.

As noted earlier, my hope is that, by recognizing that the mandate issue will take more time and require further input, government and the Ministry can now concentrate on the other ten areas of advice that I have provided.

Sincerely,

A handwritten signature in black ink, appearing to be "Bob Plecas", written over a circular scribble.

Cc: Mary Ellen Turpel-Lafond, Representative for Children and Youth
Mark Sieben, Deputy Minister
The Hon. E.N. (Ted) Hughes, Q.C.



REPRESENTATIVE FOR
CHILDREN AND YOUTH



Jan. 27, 2016

Ref: 21620

Honourable Stephanie Cadieux
Minister of Children and Family Development
Room 236, Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Minister:

Re: Robert Plecas Letter of December 18, 2015 to Minister Cadieux

I am writing today in connection with Mr. Plecas' letter to you, dated December 18, 2015, and copied to me. I am writing to ensure that the public record is complete, and to close the book on this chapter in which the statutory role of my office was inappropriately associated with a "culture of blame".

In his letter to you, Mr. Plecas refers to the "reaction" and the "disproportionate amount of focus" given to the part of his Interim Report headed "External Oversight". That is of course the section of the Interim Report in which he offers various statements and recommendations to you and the Government about the future mandate of the Representative for Children and Youth. His December 18, 2015 letter states:

Minister, I have learned over the years that there are times when one should be prepared [sic] to engage in "serious second thought" and the reaction to my report has resulted in me doing just that in relation to the mandate question.

While I might be optimistic that the threshold necessary for a change in mandate could be achieved within two years, it is now clear to me that much more will need to be done to strengthen public confidence in the Ministry before that evolution can be considered. As a result, I have to concede that the two year time line suggested in my report is too ambitious. It will be for the Standing Committee to determine when they will wish to consider the matter pursuant to the statutory responsibility assigned to them through section 30(1) of the Representative for Children and Youth Act. As elected representatives they will determine the process that they would wish to follow but I anticipate they would hear from the Minister, from the Ministry, from the Representative for Children and Youth and from others who can provide input regarding whether the necessary level of public confidence has been achieved and, further, that appropriate processes have been established to ensure proper quality assurance and oversight. I have taken the liberty of discussing this with Mr. Hughes and we are in agreement that this is a constructive way to move forward.

As noted earlier, my hope is that, by recognizing that the mandate issue will take more time and require further input, government and the Ministry can now concentrate on the other ten areas of advice that I have provided.

.../2

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Central to Mr. Plecas' revised view appears to be the recognition of the fundamental statutory role of the Select Standing Committee on Children and Youth.

I have appeared before the Standing Committee on 33 occasions (full chronology attached). That number includes appearances in connection with the 5 year review of my mandate (2011-12), as well as the further review of my monitoring mandate undertaken last year. My experience before the Standing Committee only reinforces my commitment to the wisdom enshrined in section 30 of the *Representative for Children and Youth Act (RCY Act)*, which is that the Standing Committee process represents the exclusive and appropriate forum in which to undertake periodic review of the Representative's ongoing external oversight role.

As a matter of principle, the Standing Committee's review function is consistent with the Representative's status which is as an officer of the legislature, not an official serving at the pleasure of government. As a matter of democratic accountability, the Standing Committee process allows the Committee to deliberate on a bi-partisan basis, and as the public record shows, the Committee has done so. The Standing Committee process also enables open and transparent hearings and fact-gathering.

Over and above all this, section 30 of the *RCY Act* ensures that the Committee bases its mandate decisions on "ensuring that the needs of children are met" rather than on extraneous considerations. This focus has led the Committee to recognize that the 5 year reviews are about serving children, not about seeing how quickly the Representative's mandate might be abolished.

The 2012 hearings were collaborative and child-focused. They recognized that a "mandate review" does not need to be about abolition – it may just as easily lead the Committee to recommend maintaining, clarifying or even augmenting the Representative's role, which is exactly what happened in 2012 when our role was amended to authorize advocacy for young adults with special needs. This child-centred focus led to an entirely different outcome than would have arisen had the simplistic question been asked: "how soon can Government rid itself of external oversight?"

The child-centred focus requires the Committee to look beyond politics, personalities, internal narratives and preferred theories of public sector management. It requires the Committee instead to ask itself fundamental questions about how, in the real world, and in the absence of independent oversight, the needs of British Columbia's children, including a distressingly high proportion of Aboriginal children, can meaningfully be met in both reality and public perception. This reflection must occur within an environment of the inevitable entrenched conflicting internal interests and political pressures arising within any government when a child dies or is critically injured while receiving a reviewable service.

Representative for Children and Youth,
British Columbia



I am disappointed that it was only due to unexpected public “reaction” that Mr. Plecas found it important to engage in “serious second thought”, and wrote to you displaying the deference he came to appreciate must be given to the *RCY Act* and the Standing Committee process. It is disappointing to me that he did not have this insight before releasing his report, which proposed systemic recommendations before performing the comprehensive file review upon which recommendations were to be based, and where he proposed to venture into an area not even referred to his Terms of Reference.

In that context, the fact that I was not given a draft of the Report with a meaningful opportunity to offer comment on those portions addressing my office remains highly problematic. And it is most disappointing that after I took the initiative, on extremely short notice, to bring attention to serious factual errors and omissions concerning my office, Mr. Plecas rejected my comments without explanation or rationale and proceeded with the public release of the report as a *fait accompli*.

For convenient reference, and to avoid repetition, I attach to this letter a copy of the December 11, 2015 letter (attachment) sent at my instruction to Mr. Plecas through his counsel. That letter listed the errors and omissions contained in the “External Review” section of his Interim Report. A key error involved Mr. Plecas’ description of the communication and relationship between my office and the Ministry. In fact, that relationship, despite the realities that are inherent to any external review relationship, has been marked by a high degree of professionalism and collaboration, including in previous reviews of the *Act* and daily contact by our respective staff as we have responded to over 15000 advocacy cases.

That letter also described errors in Mr. Plecas’ characterization of my recommendations to government, and it pointed out the Report’s misunderstanding of the operation of the functions carried out by this office.

The December 11 letter also addressed Mr. Plecas’ problematic assertion that “deaths and serious injuries to children known to MCFD occur only rarely”. I remain unclear as to how so significant an assertion – an assertion that would cause a reasonable person to think a certain way - could be made in the complete absence of any empirical evidence being cited in support. Even more surprising is how that statement could remain in the Report without correction even after my December 11 letter provided that information, repeated here:

Between July 2007 and September 2015 the Representative received 2981 critical injury and death reports, 2077 critical injuries and 814 deaths. In the 2015/16 Fiscal YTD April-October inclusive the RCY has received 380 critical injury and 90 death reports, a total of 470. It would be useful for the reader of your report to have that data, as a reasonable person may differ with your client’s descriptor of “rare”. That is particularly so as under-reporting of critical injuries by MCFD remains a very serious concern. In the *Paige* Report, the Representative noted receiving only a single reportable circumstance prior to her death, although she did receive a



Representative for Children and Youth,
British Columbia

second after her death. Also noteworthy is the steep increase in reported injuries, which likely reflects the completion of ministry reportable circumstance training for social workers across the province in April and May of this year. Death report levels have generally remained steady.

Minister, I am in receipt of a letter from you dated January 19, 2016, in response to mine of December 22, 2015 concerning Mr. Plecas' Interim Report. Your letter advises me that, as a result of that report, you intend to consult more widely, and that you have directed your Deputy Minister to develop a model for a "transition team" and possible "Advisory Council" to assist the transition team. Your letter states:

...I do not expect the Implementation Team or the Advisory Council will address the role and function of your office. Any matters pertaining to the role and mandate of the Office of the Representative for Children and Youth are for the Legislature and Select Standing Committee of Children and Youth to consider at an appropriate time, consistent with section 30(1) of the *Representative for Children and Youth Act*.

While I appreciate your response to my letter, it does not fully address the concerns expressed in this letter about the Interim Report.

Given the revised views set out in Mr. Plecas' December 18, 2015 letter to you, the factual errors and omissions reflected in the section of his Report concerning my office, which subject matter was not even in the terms of reference, the fact that this part of the Report was drafted without notifying me, consulting me or responding to my comment, and out of proper respect for this office and for the Standing Committee which must be given every opportunity to undertake its future deliberations with a clean slate, I formally request that you, as the Minister and on behalf of Government, issue a public statement stating unequivocally that you decline to accept all those portions of Mr. Plecas' Interim Report concerning external oversight.

Finally, I hope you can appreciate that targeting my leadership as Representative and my office in such a high profile public report is unfair and extends beyond me personally to the staff of RCY. They have discharged a challenging mandate established by the Legislative Assembly of B.C. and have taken a detailed and thoughtful approach, always with the needs of vulnerable children as our focus, when on more than 30 occasions we have appeared before the Standing Committee, and in our reports and activities in service to British Columbia's children and families.

I await your response.

Yours truly,

Mary Ellen Turpel-Lafond
Representative for Children and Youth

Representative for Children and Youth,
British Columbia





February 9, 2016

Ref: 226479

Mary Ellen Turpel-Lafond
 Representative for Children and Youth
 400 - 1019 Wharf St
 Victoria BC V8W 2Y9

Dear Ms. Turpel-Lafond:

Thank you for your letter of January 27, 2016, expressing your concerns in response to Mr. Plecas' December 18, 2015 letter and interim report, *Decision Time*.

Please find enclosed a letter that I have recently sent to the Chair and Deputy Chair of the Select Standing Committee on Children and Youth which, among other things, confirms government's view as well as my own view that pursuant to Section 30 of the *Representative for Children and Youth Act*, the Select Standing Committee is responsible for considering the scope and function of your office. I anticipate opportunities will present themselves in the future to reiterate this position.

Thank you again for writing.

Sincerely,


 Stephanie Cadieux
 Minister

Enclosure (2)

pc: Mark Sieben, Deputy Minister
 Ministry of Children and Family Development
 Bob Plecas, Consultant

Ministry of
 Children and Family
 Development

Office of the
 Minister

Mailing Address:
 Parliament Buildings
 Victoria BC V8V 1X4

Location:
 Parliament Buildings
 Victoria

Appendix C

Representative's Correspondence with SSCCY re: Review of RCY



December 14, 2015

Ref: 21519

Jane Thornthwaite, MLA
Chair, Select Standing Committee on Children and Youth

Doug Donaldson, MLA
Deputy Chair, Select Standing Committee on Children and Youth

c/o Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, BC V8V 1X4

(Via Email)

Dear Jane Thornthwaite and Doug Donaldson,

I write to you following the public release of the interim report of Robert Plecas, subtitled "A review of policy, practice and legislation of child welfare in BC in relation to a judicial decision in the J.P. case" (Plecas report).

As you may be aware, the Plecas report includes observations and recommendations regarding the ongoing statutory role of the Representative for Children and Youth.

Periodic review written into the Act

As you know, the requirement for periodic review of the statutory functions of this office was written into section 30 the *Representative for Children and Youth Act* (the Act). The current version of section 30, enacted in March 2013 following the Committee's May 2012 review report, states:

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.

.../2

Wisdom of the Standing Committee process

Just as the drafters of the *Act* had the wisdom to recognize that the *Act* should be subject to periodic review, so too did they have the wisdom to recognize that such reviews should be undertaken by the Standing Committee on a bi-partisan basis rather than being sponsored by a particular government, which was in this case required to make the reviewer a delegate of the director in order even to share documents.

The Committee's review role is consistent with the Representative's status as an officer of the legislature rather than an appointee of the government. It reflects the reality that a government-sponsored review of this office can become very awkward given that government is the subject of ongoing oversight by the officer of the legislature. It allows the Committee to conduct hearings and to base its decisions on accurate facts in an open process. It allows the Committee to deliberate on a bi-partisan basis. And most importantly, it ensures that the Committee bases its decisions *on ensuring that the needs of children are met*, as required by section 30, which avoids the temptation that can sometimes arise to allow reforms to be based on the extraneous considerations.

The Committee's May 2012 review of the Act

The Committee's May 2012 review report was comprehensive. It was the culmination of a process of hearings and committee deliberations that began in September 2011.

The Committee heard directly from the Ministry, the Honourable Ted Hughes, Q.C. and myself, and invited written submissions. My October 6, 2011 submission emphasized the need for stability, with certain mandate clarifications going forward. On October 20, 2011, Deputy Minister Stephen Brown, for the Ministry, agreed that the advocacy and critical injury and death review function ought to continue for 5 years. On February 22, 2012, I advised the Committee as follows:

I'll speak just very briefly to the bigger issue, which is that the representative's office has enjoyed a very positive collaborative relationship with the ministry and with the deputy and the staff in the Ministry of Children and Family Development offices around the discussions of oversight and how we may look at renewal in the statute of some functions and how we see them moving forward. We've had a vigorous and positive process of meetings and discussions. We've also had the opportunity to have some discussions with officials in the Ministry of Attorney General just around some drafting and so forth.

I note that on November 3, 2011, Ted Hughes, Q.C. addressed the Committee. Mr. Hughes stated as follows with regard to the advocacy and critical injury / death review functions:

Turning to the issues, in accordance with my report, section 6 lists the three lead functions of the representative: advocacy, monitoring, and the investigation and reporting on the deaths and critical injuries of children in care.

Representative for Children and Youth,
British Columbia



The representative supports continuance of all those responsibilities for the next five years. She said that the need is still there, and stability in the system calls for continuance. The ministry agrees, with respect to the responsibilities relating to advocacy and the investigation of the injuries and deaths.

Let me just indicate to you what Mr. Brown said in that regard.

"So in a very straightforward way, we absolutely agree and would recommend to you for your consideration that the mandate and authority as set out in the act as it applies to advocacy should just straightforwardly remain in place over the next five years."

I'm going to just interrupt my reading of his remarks and say my view is, and I think Mr. Brown would agree, that it's not intended that there be a limitation of five years placed on that role in the statute, but rather it be a continuing one. I'll go on, then, and read the rest of what he said.

"That is an absolutely critical function, a critically important function, in terms of when we're working with the kind of power that we have through legislation in an organization like MCFD. Having an entity distinct from MCFD that can advocate and assist and support individual children and youth working through the complexities of that legislation, I think, is an absolutely valuable and critical function that we should keep.

"We also agree with the report that the mandate and authority as it applies to the function related to investigating critical injuries and deaths should continue as defined under section 6(c). That's brought a level of stability to that process and is an evolving way of working with that process, which we think will become stronger over the coming period. We would recommend you consider keeping that."

With both of the same mind, I would think that would satisfy you, and it certainly satisfies me. [emphasis added]

With regard to the Representative's monitoring function, the Committee accepted that an earlier review was required, and should occur before April 1, 2015. In accordance with that deadline, the Committee on March 26, 2015 and completed the review required by s. 30(2) of the *Act*. The Committee received a joint letter from the Deputy Minister of Children and Family Development and myself "describing their shared view that the Representative's monitoring function, including reviewing, auditing and research, remains a required and important aspect of oversight and public accountability of the performance and outcomes of the Ministry...." That joint letter was just another example of the office of the Representative and the Ministry working professionally and cooperatively.

Representative for Children and Youth,
British Columbia



Moving forward

As I mentioned at the outset, the Plecas report, commissioned by the government, includes observations and recommendations regarding the ongoing statutory role of the Representative for Children and Youth.

I must note that the report's observations regarding my office did come as a surprise, as I am unable to identify where that mandate arises in his terms of reference. While Mr. Plecas did contact me very early in his review process – at which time his first term of reference asked him to address the same issues as the Supreme Court had determined after a 300 day trial – I responded that, in accordance with my legal advice, I would do so if provided with an agenda, which would enable me to determine what might be on or offside in such discussions. Unfortunately, the request for an agenda was declined and so the meeting did not happen.

I was disappointed when - having learned only last week that his report intended to address the future of this office - Mr. Plecas only offered to provide me with a briefing but not an advance copy for the purpose of addressing any factual errors. When I received a copy of the report on December 11, 2015, I identified several errors the same day. Regrettably, none of those suggestions was accepted and when I did see the published report, it contained what I regard as several significant factual errors pertaining to my office, including errors regarding the communication and relationship between my office and the Ministry, unhelpful generalizations about my recommendations to government, a misunderstanding of my advocacy role and the unfortunate use of the adjective “rare” when it comes to describing the number of children known to the Ministry who are killed or critically injured each year.

All this only reinforces the wisdom of the *Act*, which places the legislative review function in the hands of the Committee. In this regard, I wish all Committee members to know that while the *Act* requires the next review to take place before April 1, 2017, I am fully prepared at any time to meet with the Committee and to engage in reasonable and fact-based discussions, as we have always done, with regard to the future of my office as it pertains to achieving the best results for the vulnerable children of this province.

Yours Truly,

Mary Ellen Turpel-Lafond
Representative for Children and Youth

Representative for Children and Youth,
British Columbia



pc: Donna Barnett, MLA
Member, Select Standing Committee on Children and Youth

Marc Dalton, MLA
Member, Select Standing Committee on Children and Youth

Carole James, MLA
Member, Select Standing Committee on Children and Youth

Maurine Karagianis, MLA
Member, Select Standing Committee on Children and Youth

John Martin, MLA
Member, Select Standing Committee on Children and Youth

Dr. Darryl Plecas, MLA
Member, Select Standing Committee on Children and Youth

Jennifer Rice, MLA
Member, Select Standing Committee on Children and Youth

Dr. Moira Stilwell, MLA
Member, Select Standing Committee on Children and Youth

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees
Select Standing Committee on Children and Youth

Representative for Children and Youth,
British Columbia



Appendix D

Chronology of Appearances: Office of the Representative for Children and Youth at the B.C. Legislature's Select Standing Committee on Children and Youth, 2007 to April, 2016

2016

Thursday, April 14, Victoria

Re-election of Jane Thornthwaite as Chair and Doug Donaldson as Deputy Chair.

Discussed:

- *Growing Up in B.C. – 2015* (with Provincial Health Officer)

2015

Monday, November 23, Victoria

Jane Thornthwaite, MLA (Chair); Doug Donaldson, MLA (Deputy Chair)

Discussed:

- *2014/15 Annual Report and 2015/16 – 2016/17 Service Plan*
- *Paige's Story: Abuse, Indifference and a Young Life Discarded*
- *The Thin Front Line: MCFD Staffing Crunch Leaves Social Workers Over-Burdened, B.C. Children Under-Protected*
- *Children at Risk: The Case for a Better Response to Parental Addiction*

Wednesday, May 6, Victoria

Jane Thornthwaite, MLA (Chair); Doug Donaldson, MLA (Deputy Chair)

Discussed:

- *Finding Forever Families: A Review of the Provincial Adoption System*
- *BC Adoption Update* (November 2014 and April 2015)

Wednesday, March 25, Victoria

Jane Thornthwaite, MLA (Chair); Doug Donaldson, MLA (Deputy Chair)

Discussed:

- Update from the Office of the Representative for Children and Youth
- *Who Cares? B.C. Children with Complex Medical, Psychological and Developmental Needs and their Families Deserve Better*

Tuesday February 24, Victoria

Jane Thornthwaite, MLA (Chair); Doug Donaldson, MLA (Deputy Chair)

Discussed:

- Correspondence Regarding Statutory Review: *Representative for Children and Youth Act*, Section 6 (1)(b)
- *Not Fully Invested: A Follow-Up Report on the Representative's Past Recommendations to Help*
- *2013/14 Annual Report and 2014/15-2015/16 Service Plan*

2014

Wednesday, May 7

Jane Thornthwaite, MLA (Chair); Carole James, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *On Their Own: Examining the Needs of B.C. Youth as They Leave Government Care*

Wednesday, March 26

Jane Thornthwaite, MLA (Chair); Carole James, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Lost in the Shadows: How a Lack of Help Meant a Loss of Hope for One First Nations Girl*

2013

Tuesday, November 26, Vancouver

Jane Thornthwaite, MLA (Chair); Carole James, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Out of Sight: How One Aboriginal Child's Best Interests Were Lost Between Two Provinces*
- *When Talk Trumped Service: A Decade of Lost Opportunity for Aboriginal Children and Youth in B.C.* – November 2013

Monday, November 4, Victoria

Jane Thornthwaite, MLA (Chair); Carole James, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *2012/13 Annual Report and 2013/14 to 2014/15 Service Plan*
- *Still Waiting: First-hand Experiences with Youth Mental Health Services in BC*
- *Much More than Paperwork: Proper Planning Essential to Better Lives for B.C.'s Children in Care*

Monday, September 23, Victoria

Jane Thornthwaite, MLA (Chair); Carole James, MLA (Deputy Chair)

Discussed:

- Overview of the mandate of the office of the Representative for Children and Youth and an update on current work
- *Trauma, Turmoil and Tragedy: Understanding the Needs of Children and Youth at Risk of Suicide and Self-Harm, An Aggregate Review*
- *Who Protected Him? How B.C.'s Child Welfare System Failed One of Its Most Vulnerable Children*

2012

Wednesday, November 21, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *2011/12 Annual Report and 2012/13–2013/14 Service Plan*

Monday, October 15, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- *Honouring Kaitlynn, Max and Cordon, Make Their Voices Heard Now* (joint with MCFD staff)

Tuesday, May 29, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- *So Many Plans, So Little Stability: A Child's Need for Security* (joint with MCFD staff)

Tuesday, April 17, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- An update on the work of the Office of the Representative for Children and Youth
- *Sexual Abuse Intervention Program*
- *Reporting of Critical Injuries and Deaths to the Representative for Children and Youth*
- *Phallometric Testing and B.C.'s Youth Justice System*
- Preliminary Performance measures for the Office of the Representative for Children and Youth

Wednesday, February 22, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

- Statutory Review of the *Representative for Children and Youth Act* (joint appearance with MCFD Deputy Minister Stephen Brown)

2011

Wednesday, November 16, 2011, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- *Champions for Children and Youth: the 2011 Summit Fresh Voices from Long Journeys: Insights of Immigrant and Refugee Youth* (including youth delegation from Vancouver Foundation)

Thursday, October 6, Victoria

Discussed:

- Statutory Review of the *Representative for Children and Youth Act*

Wednesday, September 7, Victoria

Joan McIntyre, MLA (Chair); Claire Trevena, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Fragile Lives, Fragmented Systems: Strengthening Supports for Vulnerable Infants*
- *Isolated and Invisible: When Children with Special Needs are Seen but Not Seen*
- *No Shortcuts to Safety: Doing Better for Children Living with Extended Family*

Tuesday, June 21, Victoria

Joan McIntyre, MLA (Chair), Claire Trevena, MLA (Deputy Chair)

Discussed:

- Overview of the Office of the Representative for Children and Youth
- *Growing Up in B.C.* (joint report of the Office of the Representative for Children and Youth and the Office of the Provincial Health Officer)
- *Update: System of Services for Children and Youth with Special Needs*
- *Hearing the Voices of Children and Youth – A Child-Centred Approach to Complaint Resolution*, joint report of the Office of the Representative for Children and Youth and the Office of the Ombudsperson (joint appearance with staff of the Office of the Ombudsperson)

2010**Monday, November 8, Victoria**

Joan McIntyre, MLA (Chair); Maurine Karagianis, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *2010/11 Annual Report*
- *2011/12 to 2013/14 Service Plan*
- Domestic violence update

Wednesday, June 2, Victoria

Joan McIntyre, MLA (Chair); Maurine Karagianis, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Honouring Christian Lee*
- *No Private Matter: Protecting Children Living with Domestic Violence*

Wednesday, January 27, Victoria

Joan McIntyre, MLA (Chair); Maurine Karagianis, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Kids, Crime and Care: Health and Well-Being of Children in Care* – February 2009, Joint Report of Representative for Children and Youth and the Office of the Provincial Health Officer
- *Housing, Help and Hope: A Better Path for Struggling Families*

2009

Tuesday, November 17, Victoria

Joan McIntyre, MLA (Chair); Maurine Karagianis, MLA (Deputy Chair)

Discussed:

- Overview of mandate, responsibilities and the work of the Office of the Representative for Children and Youth
- *2008/09 Annual Report of the Office of the Representative for Children and Youth*
- *2010/11 – 2012/13 Service Plan*

2008

Wednesday November 26, Victoria

Ron Cantelon, MLA (Chair); Nicholas Simons, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth

Wednesday, October 1, Victoria

Ron Cantelon, MLA (Chair); Nicholas Simons, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- Children's Forum (with PGT, Ombudsman, Chief Coroner, PHO, ADM MCFD)

Wednesday, June 12, Victoria

Ron Cantelon, MLA (Chair); Nicholas Simons, MLA (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth
- *Amanda, Savannah, Rowen and Serena: From Loss to Learning* (appeared with MCFD officials)

Wednesday, May 7, Victoria

Ron Cantelon (Chair); Nicholas Simons (Deputy Chair)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth

2007**Tuesday, December 11, Victoria**

Ron Cantelon, MLA (Chair); Leonard Krog, MLA (Deputy Chair)

Discussed:

- Service Plan and Budget for the Office of the Representative for Children and Youth
- *Update #1 – Critical Injuries and Deaths: Reviews and Investigations* (November 7, 2007)
- Section 12(2) of the *Representative for Children and Youth Act*

Monday, November 26, Victoria

Ron Cantelon, MLA (Chair); Leonard Krog, MLA (Deputy Chair)

Discussed:

- *2007/2008 Service Plan and 2007 Progress Report on the Implementation of the Recommendations of the BC Children and Youth Review*

Tuesday, September 4, Victoria

Leonard Krog, MLA (Deputy Chair) (Katherine Whittred, MLA (Chair) unavoidably absent) (MCFD DM duToit and staff also appeared at this meeting)

Discussed:

- Update on the work of the Office of the Representative for Children and Youth

Thursday, June 28, Victoria

Katherine Whittred, MLA (Chair); Leonard Krog, MLA (Deputy Chair)

Discussed:

- *Joint Special Report: Health and Well-Being of Children in Care in British Columbia: Educational Experience and Outcomes* (joint appearance with Deputy Ministers and senior officials from MCFD, Education, Advanced Education, Health, and Employment and Income Assistance)
- Implementation of Hughes report recommendations (joint appearance with ADM, MCFD)

Thursday, June 14, Victoria

Katherine Whittred, MLA (Chair); Leonard Krog, MLA (Deputy Chair)

Discussed:

- *Health and Well-Being of Children in Care in British Columbia: Educational Experience and Outcomes* (joint appearance with Provincial Health Officer)
- Update on the work of the Office of the Representative for Children and Youth

Thursday, April 26, Victoria

Katherine Whittred, MLA (Chair); Leonard Krog, MLA (Deputy Chair)

Discussed:

- General discussion on the Office of the Representative for Children and Youth

March 6, Victoria

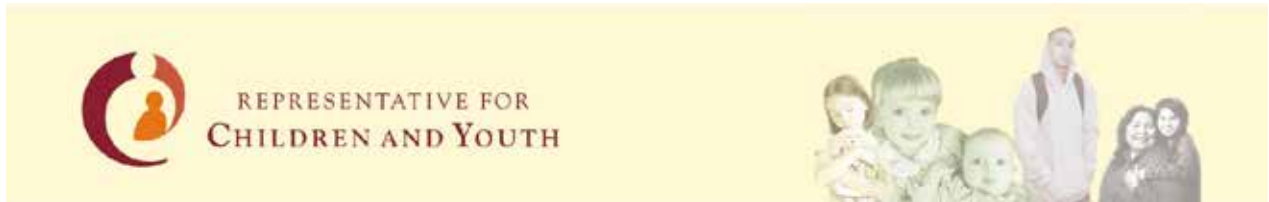
Katherine Whittred, MLA (Elected Chair at this meeting); Leonard Krog, MLA (elected Deputy Chair at this meeting)

Discussed:

- General discussion on the Office of the Representative for Children and Youth
- Referral for Investigation the deaths of four children: Amanda Simpson, Savannah Hall, Rowen Von Niederhausern and one case discussed in-camera

Appendix E

Record of Correspondence re: RCY's Request for Plecas Report Information from MCFD



February 9, 2016

Ref: 21665

Mark Sieben
Deputy Minister
Ministry of Children and Family Development
4th Floor – 765 Broughton Street
Victoria, BC V8W 1E2

Dear Mark:

RE: Request for Information

The Representative for Children and Youth (RCY) is an independent Officer of the Legislature appointed under the *Representative for Children and Youth Act (RCYA)*.

The Representative seeks clarification of the process used by the Ministry of Children and Family Development in developing the Plecas Report ('the Report').

The Representative is requesting records, pursuant to section 10 of the RCYA, pertaining to the development, drafting and release of the Report, including:

Any and all documents, emails and memos referencing or relating to:

- Office communications between report team members;
- Lists of meetings/meeting attendance, meeting notes, agendas and briefing materials;
- Meetings and exchanges with Ministers, MLAs, the Premier and their respective staff;
- Terms of reference and scope of inquiry;
- Cabinet communications pertaining to Terms of Reference and scope of inquiry;
- All executed, in progress and pending contracts;

*Please refer to Appendix A for a detailed description of all documents

The Representative's office would also like to interview all senior staff involved with the Report, including Mr. Bob Plecas.

The purpose of this request is to better understand the processes used to prepare the Report and to contextualise the data, literature and recommendations found in the Report.

Please send the requested information via email as soon as possible to Mary Ellen Turpel-Lafond, Representative for Children and Youth, at rcy@rcybc.ca.

.../2

Part 3 of the *RCYA* outlines the Representative's functions and powers; specifically, section 10 of the *RCYA* provides as follows:

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*.

After receiving a section 10 request from the Representative, the only information a public body can lawfully withhold is information covered by solicitor-client privilege or information protected by section 51 of the *Evidence Act*. All other information, including information that would otherwise be subject to withholding under the *Freedom of Information and Protection of Privacy Act*, must be disclosed to the Representative.

Thank you for your attention to this request. Please contact Dawn Thomas-Wightman directly if you have any questions. She can be reached by email at dawn.thomas-wightman@rcybc.ca or by phone at 250-387-3293.

Sincerely,



Mary Ellen Turpel-Lafond
Representative for Children and Youth

Representative for Children and Youth,
British Columbia



APPENDIX A – Detailed Documents Request

All Documents, emails, memos and minutes relating to and/or referencing:

Report Planning:

- All draft and final Terms of Reference and/or Terms of Association
- All draft and final scoping documents
- Report methodology /design
- All draft and final Report work plans
- All formal and informal meetings and exchanges involving Report team members held for the purpose of planning, researching, writing, revising or releasing the Report, including meetings pertaining to hiring the Report team, assigning tasks and reviewing work;
- All formal and informal meetings and exchanges between Report team members and the Premier, Ministers, Members of the Legislative Assembly, *and* their respective staff, held for the purpose of planning, researching, writing, revising or releasing the Report;
 - A complete list of attendees at any/all meetings;
 - All formal and informal agendas;
 - All formal and informal briefing materials;
- Cabinet communications, including documents, emails, memos, meetings, and minutes referencing development of a Terms of Reference, Terms of Association, and scope of inquiry for the Report;
 - A complete list of attendees at any/all meetings;
 - All formal and informal agendas;
 - All formal and informal briefing materials;
- Copies of all pending, in-progress and/or executed contracts used for the Report;

Individuals involved with the Report:

- All team members involved in the research, writing, review and release of the Report including, but not limited to, Local Service Area staff, contractors, Ministry employees, and/or external stakeholders, consultants and appointees;
 - All tasks assigned to each team member, areas of responsibility and work completed;

Representative for Children and Youth,
British Columbia



- All team member qualifications and rationales for task assignments.
- Number and role of participants/offices contacted, interviewed, or otherwise involved in the Report;
- Number and role of contractors involved in the production and/or revision of the Report, including, but not limited to, data collection, community/stakeholder engagement, communications and/or research;

Components of Methodology:

Where persons have provided data, commentary or other information for use in the Report, or where associated materials exist (such as presentations, briefings, summaries):

- Interview Transcripts from conversations between the Report team and Local Service Area staff, contractors, Ministry employees, and/or external stakeholders
- Copies of all questions and/or interview guides
- The number, type and location of data sources used in the Report, including:
 - Where each piece of quantitative data was sourced;
 - Where each piece of qualitative data was sourced;
 - Where quotes, attributions and references to policy and/or legislation were sourced;
- Copies of all data used to complete the Report, including:
 - Qualitative data from interviews (coding framework, qualitative analyses);
 - Quantitative data referred to but not specifically printed in the Report;

Aboriginal Engagement:

- Aboriginal consultants, groups or contractors contacted, interviewed, or otherwise involved in the Report, including:
 - How and when consideration was given to Aboriginal perspectives;
 - Where, when and with whom Aboriginal consultation and/or engagement took place;
- How the above information was taken into consideration in the writing of the Report;

Representative for Children and Youth,
British Columbia



General Inquiries:

- Discussion of contrarian position, including:
 - Evidence for its effectiveness;
 - How it can and/or is proposed to be applied in a child welfare or social work setting;
- Discussion of early warning system, including:
 - Evidence for its effectiveness;
 - How it can and/or is proposed to be applied in a child welfare or social work setting;
- What happens and/or what is proposed to happen to cases that have been flagged in the early warning system, including:
 - Where cases would go once flagged
 - What the follow-up procedure would look like after a case is flagged and filed.

Implementation of Report Recommendations:

Regarding any/all proposed or potential plans to implement the recommendations in the report:

- Draft and final Terms of Reference and/or Terms of Association;
- Any Strength, Weakness, Opportunity and Threat (SWOT) analyses and/or feasibility/pre-feasibility studies;
- Draft and final proposed/potential implementation plan methodology /design;
- Draft and final work plans;
- All formal and informal meetings held for the purpose of planning, researching, writing, revising or releasing the proposed/potential implementation plan, including meetings pertaining to hiring, assigning tasks and reviewing existing work;
- All formal and informal meetings and exchanges between the Report team and the Premier, Ministers, Members of the Legislative Assembly, *and* their respective staff, held for the purpose of planning, researching, writing, revising or releasing the proposed/potential implementation plan;
 - A complete list of attendees at each meeting;
 - All formal and informal agendas;
 - All formal and informal briefing materials;



Representative for Children and Youth,
British Columbia

- Cabinet communications referencing development of a Terms of Reference, Terms of Association, and scope of inquiry;
 - A complete list of attendees at any/all meetings;
 - All formal and informal agendas;
 - All formal and informal briefing materials;
- Contracts for the purposes of the proposed/potential implementation plan;
- Copies of all pending, in-progress and/or executed contracts.

Representative for Children and Youth,
British Columbia



Via FaxFebruary 25th, 2016

"Without Prejudice"

Frank A.V. Falzon, Q.C.
 Suite 200, 3661 Shelbourne Street
 Victoria, British Columbia
 V8P 4G8

Dear Mr. Falzon:

Re: Request for Information

I write to you in your capacity as counsel for the Representative for Children and Youth ("RCY"). My clients at the Ministry of Children and Family Development ("MCFD") have provided me with the attached letter from the RCY dated February 9th, 2016 in which the RCY requests information from MCFD pursuant to her authority under s. 10 of the RCYA.

Given the nature and scope of the information requested I would observe that there are several "public bodies" affected by this request and MCFD may not have custody or control over much of the information requested.

Further, section 10(1) (b) limits the authority to make a s. 10 request to:

"information that is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act."

The functions of the RCY are set out in s. 6 of the RCYA :

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

Ministry of
 Attorney General

Legal Services Branch
 Health & Social Services Group

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(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

The request is not made for the purposes the RCY's advocacy functions described in s. 6(1)(a) or (a.1) . Nor is this a request for a review of a critical injury or death pursuant to s.6 (1) (c).

S. 6 (1) (b) provides the RCY with authority to:

"monitor review audit or conduct research on the provision of a designated service by a public body or director ..."

A "designated service" is defined in section 1 and "means any of the following services or programs for children and their families..."

With respect, the stated purpose of the RCY in making this request does not meet the criteria of s. 6(1)(b). The "Report" referred to in the letter is not a "service or program for children and families" but rather it is an internal quality assurance function of the Director.

With regard to the requested information that is within the custody and control of MCFD, my client respectfully takes the position that section 10 does not provide authority for this request as the requested information is not necessary for the RCY to exercise her powers or functions under the RCYA.

I am happy to discuss this matter further if you think that may be beneficial,

Yours truly,



Katherine LeReverend
Barrister and Solicitor

KLR/cgp

Frank A.V. Falzon, Q.C.*

Barrister and Solicitor

March 9, 2016

via fax

Ministry of Attorney General
Legal Services Branch
Health & Social Services Group
PO Box 9280 STN PROV GOVT
Victoria, B.C. V8W 9J7

Attention: Katherine LeReverend

Dear Ms. LeReverend:

I write on behalf of my client, the Representative for Children and Youth, in response to your letter dated February 25, 2016.

Your February 25, 2016 letter was written in response to the Representative's February 9, 2016 letter to Mr. Sieben requesting records under section 10 of the *Representative for Children and Youth Act (RCYA)*. Section 10 reads as follows:

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*.

As you know, the Representative's right to information under section 10 is enforceable in the courts: *Representative for Children and Youth v. British Columbia (Child and Family Development)*, 2010 BCSC 697.

I note that your February 25, 2016 letter is marked "without prejudice". It is not entirely clear as to how, given the compulsory nature of a section 10 request and the Minister's legal duty to comply as set out in s. 10(3) of the *RCYA*, a refusal to comply can take place in a "without prejudice" letter. We can therefore only reasonably take your letter to be a refusal and its content

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*Denotes Law Corporation

of your letter to represent your current legal position on behalf of your client. The key point set out in your letter is found at page 4:

The “Report” referred to in the letter is not a “service or program for children and families” but is rather an “internal quality assurance function of the Director”.

I instructed to advise you of the Representative’s reasons for not accepting the position set out in your letter.

The Representative does not agree that what you have described as an “internal quality assurance function of the Director” is not a designated service. In section 1 of the *RCYA*, “designated service” is defined broadly. It includes any service or program for children and their families provided under an enactment or funded by the government under the listed statutes, including the *Child, Family and Community Service Act (CFCSA)*. The Ministry’s “internal quality assurance function” is, properly understood, an important and necessary feature of child protection service delivery under the *CFCSA*. Quality assurance – the process of self-examination that addresses how effectively child protection services are operating - is necessarily and inextricably linked with the Ministry’s delivery of child protection services themselves under the *CFCSA*. The Representative also notes that Mr. Plecas undertook his review with the legal status of a director under s. 91 the *CFCSA*, having been designated as such precisely so that he could have access to the necessary documents and operate within the Ministry in order to carry out his terms of reference. In the Representative’s view, the *CFCSA* quality assurance function is not a private advisory function disconnected from child protection as a designated service. It is a service or program for the benefit of children and their families under the *CFCSA* because it is a necessary incident of and inextricably linked with child protection services under the *CFCSA*.

The Representative notes that in an August 12, 2015 media conference, Mr. Plecas emphasized that he has “been given the authority and the responsibility and the powers of a director of child protection in the province of British Columbia”. That his report would in pith and substance be in relation to child protection services under the *CFCSA* is reflected in his statement: “I will go and look hard at this, and I’ll bring recommendations back, and if at the end of the day I can only make one or two recommendations that save one child’s life or get one child out of the situation where these children found themselves, I’ll deem that to be successful.” This is also clear from Deputy Minister Sieben’s December 14, 2015 email to staff, describing the Report as setting out a “road map” to achieve purposes described as follows:

The intent of the review was to bring a clear and objective eye to the legislation, policy, practice and standards which guide B.C.’s child welfare system -- to learn from this tragic case, and from the experiences of child protection and other professionals who live and breathe this incredibly complex work each day -- and to offer recommendations aimed at strengthening the system itself.

The Representative also considers it is also useful to go beyond a general description or characterization of the Report and to consider the *content* of the Report. Page ii makes reference to the October 9, 2015 amendment to the terms of reference:

My Terms of Reference were accordingly amended on October 9 (see Appendix 1). Paragraph 1 from the original Terms of Reference was amended to read:

Examine the child protection legislation, policy, standards and practice and actions taken in the J.P. case by ministry staff, supervisors and legal counsel, contracted to represent the Director, under the Child, Family and Community Service Act (CFCSA) and provide prospective recommendations regarding how any errors or omissions evident in the case can best be minimized or avoided in future child protection matters

The following was added to my deliverables:

An Interim Report on the comparative analysis of applicable legislation, policy, standards and practice and recommendations for the improvement of Ministry, and other, systemic processes.

It is pursuant to the October 9 amended Terms of Reference that I conducted this phase of my review.¹

“Designated services” – child protection services - under the *CFCSA* are the very subject matter of the Report. The Report makes numerous statements of fact and recommendations about how child protection under the *CFCSA* could be structurally and administratively improved. The Representative has previously commented on these very issues in reports she has issued under the *RCYA* on designated services, and many of her comments and reports are in fact referenced in the Report.

Given the Report’s substantive comment on designated services, and in view of Government’s publicly stated intention to move ahead with many of the Report’s recommendations respecting child protection as a designated services, the Representative has determined that it would be appropriate for her office to prepare a report to the Legislative Assembly providing an independent assessment of those recommendations, for which it would obviously be necessary to have the background and supporting information that informed the Report.

In this context, and in the Representative’s view, the section 10 request in this case will inform a report by her office that would be authorized by either or both of s. 6(1)(b) and section 20 of the *RCYA*:

6 (1) The representative is responsible for performing the following functions in accordance with this Act:

(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.

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:

¹ Report, p. ii

(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.


Section 6(1)(b) authorizes the Representative to review, audit and conduct research on any designated service. In the Representative's view, is obvious from its text and purpose that section 6(1)(b) does not constrain the Representative to limit her gaze to the status quo of any particular designated service. Section 6(1)(b) specifically authorizes the Representative to *monitor, review, audit and conduct research* on the provision of that service and to *make recommendations to improve the effectiveness and responsiveness of that service*. The Representative can, she has on numerous occasions, examine any designated service and make policy recommendations about how that service can be improved or changed given its objectives. The Representative is entitled to undertake a review of any and all designated services upon which the Report comments, and to make recommendations regarding those services in light of the statements and changes proposed in the Report.

The Representative takes the view that section 20 of the *RCYA* was drafted to ensure that the Representative has the broadest authority to report to the Legislative Assembly on matters affecting the child welfare system. Section 20 is a broad provision and one of its obvious purposes, relevant here, is to foreclose the technical and even ironic position that the Representative has no proper role where the child welfare system is being reviewed on a systemic basis and has given rise to what has in this case been called a proposed "road map" for change of the child welfare system under the *CFCSA*.

Having set out the Representative's reasons in this letter, I would add that, in my view, the Representative would be entitled to deference in connection with her interpretation of the *RCYA*. It is also my respectful view that, separate and apart from that deference, the sections of the *RCYA* under discussion in this letter are appropriately construed in a large and liberal fashion, consistent with the remedial purposes of the *RCYA*. Like the *Ombudsperson Act*, the *RCYA* is the "paradigm of remedial legislation" and would also be entitled to "a broad, purposive interpretation consistent with the unique role [she] is intended to fulfil": see *British Columbia Development Corp. v. British Columbia (Ombudsman)*, [1984] 2 S.C.R. 447 at 463.

While the Representative takes the position that she has the right to all of the information requested in her February 9, 2016 letter, you will see in her attached letter to the Minister that she has revised the scope of her section 10 request in an attempt to encourage a resolution of this matter without the need for litigation. The Representative has expressed her hope that this can be achieved, and that the Minister will, with benefit of today's correspondence, revisit her position.

Yours truly,



Frank A.V. Falzon, Q.C.
Barrister and Solicitor

c. client
Encls.



Via Fax

March 11, 2016

Frank A.V. Falzon, Q.C.
Law Corporation
Suite 200, 3561 Sheilbourne Street
Victoria, B.C.
V8P 4G8

Dear Sir:

Re: Request for Information

I am in receipt of your letter of March 9th, 2016. I anticipate being able to provide you with a response by Tuesday, March 15th, 2016.

Yours truly,

Katherine LeReverend
Barrister and Solicitor

KLR/cgp

Ministry of
Justice

Legal Services Branch
Health and Social Services

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REPRESENTATIVE FOR
CHILDREN AND YOUTH



March 9, 2016

Ref: 21764

Hon. Stephanie Cadieux
Minister
Ministry of Children and Family Development
Room 236, Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister Cadieux:

Stephanie,

On February 9, 2016, I wrote to Deputy Minister Sieben to request certain records related to the Plecas Report. This request was formally issued pursuant to section 10 of the *Representative for Children and Youth Act* following several informal requests for the same information. On February 28, 2016, the Ministry's legal counsel responded in letter marked "without prejudice".

The position communicated by your lawyer is dissonant with prior verbal commitments given to me by both you and your deputy minister. As I am sure you will recall, we discussed my interest in access to these documents at the time the Plecas work was initiated and you (as well as Mr. Sieben) assured me I would have full access to all materials associated with his review – including materials he considered prior to issuing his report. I recognize that the original engagement with Mr. Plecas has been revised several times and that he is now retained to do at least two further reports. Nevertheless, this does not change the context of the request as Mr. Plecas has delved into key issues pertaining to designated services for which my Office has a mandate to provide oversight. In that regard, I require access to the materials Mr. Plecas gathered and used, as well as materials relied upon by the Ministry and yourself in accepting the report and incorporating it into high-level government materials.

I want to keep legal analysis out of this letter. For that reason, I have instructed my legal counsel to reply directly to your counsel to outline in some detail my reasons in support of the section 10 request. A copy of that letter, which sets out my view as to proper interpretation of my mandate as well as my intention under the *Representative for Children and Youth Act*, is also attached to this letter. In summary, I have determined that in view of the nature and function of the Plecas Report, as well as its substantive comment on designated services, and in view of government's publicly stated intention to move ahead with most of his recommendations respecting designated services, it would be appropriate for my Office to prepare a report to the

.../2

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Legislative Assembly providing an independent assessment of those recommendations. For that purpose, it is necessary for me to have the background and supporting information that informed the subjects of the report which are being actively being pursued by government.

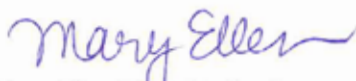
I prefer to avoid a public dispute with you and with government regarding my right of access to this material, but I would not be fulfilling my functions as an independent Office of the Legislature if I accepted the position expressed in your counsel's letter. It is clear from the Throne Speech and Budget 2016, and from various public statements you have made, that government continues to consider the Plecas Report a blueprint for Ministry functioning and program delivery under the *Child, Family and Community Service Act*. I note that, on December 14, 2015, your deputy referred to Mr. Plecas's report as a "roadmap for a four-year, multi-faceted strategic plan." As such it is entirely consistent with my mandate that I use my statutory right to access documents regarding these matters to assess these proposals affecting vulnerable children and the delivery of designated services under the *Child, Family and Community Service Act*.

I would like to ensure we have done all we can to find common ground before any applications to court are filed. To that end, and in a spirit of compromise, I am narrowing my original request for information to the documents described in Attachment A. I am requesting that you provide these materials to me no later than March 30, 2016 and I ask that you personally advise me by March 14, 2016 whether or not you are prepared to comply with that request.

I am, of course, happy to meet at your earliest convenience to discuss. I note that my deputy has had numerous discussions with your deputy in the previous weeks about these matters and is similarly willing to engage to move forward and resolve this matter.

Thank you in advance for your consideration.

Yours truly,



Mary Ellen Turpel-Lafond
Representative for Children and Youth

pc: Mark Sieben, Deputy Minister
Ministry of Children and Family Development

Attachments (4)

Representative for Children and Youth,
British Columbia



APPENDIX A – Detailed Document Request

All materials in the custody and control of the Ministry of Children and Family Development, including any director or contractor thereof, pertaining to the recommendations and aspects of Plecas' *Decision Time* report that are specifically related to Aboriginal Services and Perspectives, Policy and Practice, Quality Assurance and Budget and Staffing, as detailed below. All materials means:

- 1) All emails, memos and minutes.
- 2) All data, commentary or other sources (such as presentations, briefing notes, summaries, literature searches and reviews, copies of all questions and/or interview guides, interview notes).
- 3) All records of formal and informal meetings and exchanges between Report team members and the Premier, Ministers, Members of the Legislative Assembly, and their respective staff, held for the purpose of planning, researching, writing, revising or releasing the Report.
- 4) All records of formal and informal meetings and exchanges between Report team members and other parties, including but not limited to Local Service Area staff, contractors, Ministry employees, and/or external stakeholders, consultants and appointees.

Aboriginal Services and Perspectives:

- All matters related to child welfare services to Aboriginal children.

Policy and Practice:

- The recommendation to simplify and streamline child welfare policy and standards.
- The recommendation to refine the Integrated Case Management System.

Quality Assurance:

- Introduction of an early warning system and alert codes.
- The recommendation that about 21 additional staff are required to support quality assurance activities.
- Implementation of a robust continuous quality improvement system, with the characteristics as set out in Appendix 4 of the Report.

Representative for Children and Youth,
British Columbia



Budget and Staffing:

- All budget and staffing data referenced in the report, including analysis of the same.
- The introduction of a regional contrarian function, with one person in each region, including evidence of its prior application and effectiveness in any field as well as evidence of its previous application or potential utility and effectiveness in a child welfare or social work setting.
- The recommendations to reclassify of the Director of Child Welfare position as an Associate Deputy Minister and the creation of two Deputy Director roles (Quality Assurance, Audit and Complaints; Aboriginal Programs).
- The recommendation for salary increases for child protection social workers.
- The recommendation to replace the equity funding model for hiring with staffing levels based on an assessment of function translated in terms of workload.
- The development and funding of a Ministry training, research and analysis budget of about \$20M over the next four years and an operating budget of around \$5M a year thereafter.
- All matters related to training and professional development of child welfare staff.
- The recommendation that additional funding for fiscal year 2016/17 should be targeted at about \$50M.
- All matters related to the re-aligning of staff to the Provincial Centralized screening and Centralized Services Hub models and/or related policies and procedures.

Representative for Children and Youth,
British Columbia





March 21, 2016

Frank A.V. Falzon, Q.C.
Suite 200, 3561 Shelbourne Street
Victoria, British Columbia
V8P 4G8

Dear Mr. Falzon:

Re: Request for Information

I write in response to your March 9, 2016 letter and the Representative for Children and Youth's letter of the same date to Minister Cadieux. I am responding on behalf of myself and Minister Cadieux.

I understand that Minister Cadieux and Mark Sieben, Deputy Minister, have communicated to the RCY that the Plecas review does not preclude the RCY from conducting her own review of matters relating to the *J.P.* case. I agree with the following statement articulated in your March 9 letter:

The Representative is entitled to undertake a review of any and all designated services upon which the Report comments, and to make recommendations regarding those services in light of the statements and changes proposed in the Report.

Pursuant to s. 6 (1)(b) of the RCYA, the RCY has statutory authority to review the provision of a designated service by a public body. As such, the RCY can conduct her own review of any service or program to children and families under the *Child, Family, and Community Service Act* ("CFCSA"). As part of such a review, the RCY can take into consideration the recommendations made by Mr. Plecas and determine whether or not she agrees with them.

However, in my opinion, the RCYA does not provide the RCY with the authority to review a director's review under s. 93.2 of the CFCSA. The RCY's legislated authority is not in relation to any power, duty or function of the CFCSA director but in relation to designated services. As I stated in my February 25, 2016 letter to you, the director's authority to conduct reviews pursuant to s. 93.2 of the CFCSA is not a service or program for children and families; rather, it is a quality assurance function of the director which may result in improved services or programs to children and their families.

Ministry of
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- 2 -

With respect, I do not agree with the RCY's view that because the director's quality assurance function is linked with the director's delivery of child protection services, s. 93.2 reviews fall within the meaning of designated services. Designated Services are services and programs for children and their families; s. 93.2 director's reviews may assist in improving those services but are not part of the CFCSA services offered to children and their families. Section 93.2 reviews can be contrasted with administrative reviews under s. 93.1 of the CFCSA and Part 5 of the Child, Family and Community Service Regulation. An administrative review is a CFCSA service provided to children and their families when they are dissatisfied with a director's decision, action or failure to act.

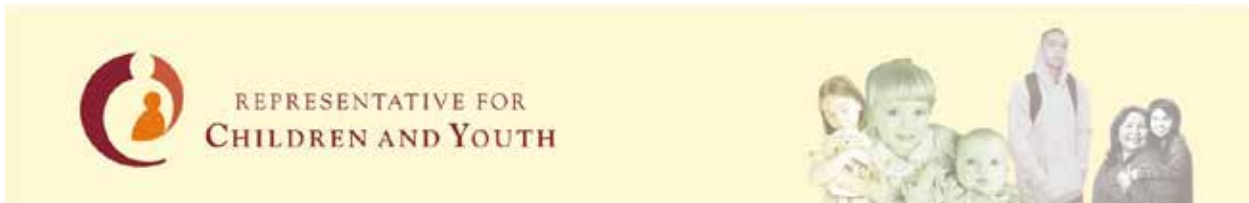
Section 20 of the RCYA does not, in my opinion, provide authority for the RCY to make a special report to the Legislative Assembly on any subject on which the RCY wishes to provide comment or critique. Such an interpretation would permit the RCY to issue reports on matters that have nothing to do with designated services and are without any legislative parameters. In order to make a special report, the RCY must necessarily review, monitor, audit and/or conduct research before she is able to formulate an opinion and recommendations for the Legislative Assembly. As such, s. 20 must be interpreted contextually, with specific consideration of the RCY's function expressed in s. 6 (1)(b) which restricts her review and monitoring function to the provision of a designated service.

It is important to note that Minister Cadieux designated Mr. Plecas as a director under the CFCSA. As such, Mr. Plecas, in his capacity as the director, is the public body that has custody of the majority of records that the RCY has requested. Legal Services Branch has communicated with Mr. Plecas's legal counsel. We understand that if the RCY redirects her request to Mr. Plecas, the response will be the same. It is our opinion that the RCY does not have a right to the requested documents because the RCY's statutory authority is limited to reviewing the provision of a designated service and does not extend to reviewing a director's review pursuant to s. 93.2 of the CFCSA.

Yours truly,



^ **Katherine LeReverend**
Barrister and Solicitor



February 15, 2016

Ref: 21674

Jane Thorthwaite, MLA
Chair, Select Standing Committee on Children and Youth

Doug Donaldson, MLA
Deputy Chair, Select Standing Committee on Children and Youth

c/o Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, B.C. V8V 1X4

(Via email)

Dear Chair Thornthwaite and Deputy Chair Donaldson:

This letter arises from Minister Cadieux's February 9, 2016 letter to you. Two matters arise from that letter that give rise to this letter to you.

First, I note that the Minister's February 9, 2016 letter to you was kindly copied to me under cover of a letter she wrote to me the same date, a copy of which is enclosed. As you will see, the Minister's letter to me makes reference to my letter to her dated January 27, 2016. In order to ensure that the record before this Committee is complete, I also attach for your information a copy of my January 27, 2016 letter to the Minister, with the pertinent attachments.

Second, I note that the Minister's letter to you makes reference to a recommendation that Government consider a legislative change that would allow confidential background briefings to the Committee Chair and Opposition members in high profile cases. This idea is set out at page 40 of the author's report:

Consideration should be given to changing legislation to allow confidential background briefings to Opposition members on specific cases. Then the debates in the Legislature could gravitate to a higher level, and be based on facts. Would this restrict the cut and thrust of question period debate? I think not. There is no more partisan legislature in the world than the Congress of the United States. Yet their House Rules and conventions permit confidential background briefings, which are now a regular feature on national security issues. This does not take away from the debate in the House or Senate, indeed it elevates it. In the future, the Chair of the Standing Committee and a designated person from the Opposition should have the authority to request, within seven days of a high profile case becoming public, or at the initiation of the Minister, an opportunity for a confidential briefing which could include the Representative. .../2

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Establishing the framework for a process of this kind may require a modest legislative change. The expectation would be that the Minister and staff could disclose sensitive personal information about a victim, for example, that would help to explain what went wrong in the care plan and safety program for this child or youth, even if an investigation, for example, is not complete. I encourage the members of the Legislative Committee to travel to Washington DC and observe their system of background briefings work in action, and report to the Legislature on how this process may be adapted to BC. [emphasis added]

If the Committee considers this issue, I encourage the Committee to take all necessary procedural steps, including hearing from a variety of witnesses, to ensure that any recommendation it makes on this issue is fully thought through and studied in all of its implications, including assessing whether the author's reference to the US system might be an instance of "apples and oranges" given the subject matter and the differences between our two systems. Subject to further analysis and discussion at the appropriate time, I simply will state in brief here that, from a child welfare perspective, I would have serious reservations about any legislative change that would make the lives of children and families fodder for public legislative debate, particularly so where an internal or external investigation is underway and has not yet determined the facts at issue.

In my work as Representative I know families have felt deeply vulnerable as to how their personal information or information regarding their families is represented by Government officials. If confidential briefings are to occur, the emphasis must be on protecting privacy in any and all public statements until after internal and external processes (which in some cases may even include criminal investigations) have run their course.

Yours truly,



Mary Ellen Turpel-Lafond
Representative for Children and Youth

Attachments (4)

pc: Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees
Select Standing Committee on Children and Youth

Representative for Children and Youth,
British Columbia





February 9, 2016

Ref: 226479

Mary Ellen Turpel-Lafond
Representative for Children and Youth
400 - 1019 Wharf St
Victoria BC V8W 2Y9

Dear Ms. Turpel-Lafond:

Thank you for your letter of January 27, 2016, expressing your concerns in response to Mr. Plecas' December 18, 2015 letter and interim report, *Decision Time*.

Please find enclosed a letter that I have recently sent to the Chair and Deputy Chair of the Select Standing Committee on Children and Youth which, among other things, confirms government's view as well as my own view that pursuant to Section 30 of the *Representative for Children and Youth Act*, the Select Standing Committee is responsible for considering the scope and function of your office. I anticipate opportunities will present themselves in the future to reiterate this position.

Thank you again for writing.

Sincerely,


Stephanie Cadieux
Minister

Enclosure (2)

pc: Mark Sieben, Deputy Minister
Ministry of Children and Family Development
Bob Plecas, Consultant

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Appendix F

Representative's Statement Following Release of the Plecas Report



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Statement

Dec. 14, 2015

By Mary Ellen Turpel-Lafond
B.C. Representative for Children and Youth

Today the provincial government released a document, Part 1 of “Decision Time, a Review of Child Policy, Practice and Legislation”, written by Bob Plecas.

I was pleased to see that Mr. Plecas’s document endorses recommendations that my Office has made continually in recent years – including those calling for more funding and adequate staffing for MCFD.

However, I also have a number of concerns about the report. Chief among those is Mr. Plecas’s assertion that independent oversight of B.C.’s child welfare system may, in a very short period of time, no longer be required. Nothing could be further from the truth.

Independent oversight of B.C.’s child welfare system – provided for the past nine years by my Office – remains a necessity. In the absence of such public accountability, *Paige’s Story* and the stories of other vulnerable children would never be told, leaving significant problems in the child protection system unaddressed.

I also take issue with Mr. Plecas’s conclusion that: “Our society long ago agreed that we must work to prevent child abuse, but often we have extended this idea to a view that it is possible to prevent all children from either suffering abuse or dying as a result of abuse and neglect. I think we must recognize that, in spite of best intentions, this is a myth.” In cases where the ministry has the information necessary to protect children at risk, British Columbians can, and must, expect it to do so.

Mr. Plecas’s interim report comments on a range of matters related to MCFD but also goes on to express views concerning the work of the courts, the role of the Representative, and the functions of the Select Standing Committee on Children and Youth. While I respect the right of government to consult all manner of advisers on issues, I am concerned that this report makes

recommendations about the curtailing of independent oversight by my Office without having spoken to me or my staff and without, to my knowledge, formally consulting the Select Standing Committee.

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Rep4Youth



REPRESENTATIVE FOR
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