Review of the *Representative for Children and Youth Act*:

Submission to the Select Standing Committee on Children and Youth by the Representative for Children and Youth

APRIL 2022

REPRESENTATIVE FOR
CHILDREN AND YOUTH

April 14, 2022

Ms. Jinny Sims, MLA
Chair, Select Standing Committee on Children and Youth
Province of British Columbia
Parliament Buildings
Victoria, B.C. V8X 1X4

Dear Ms. Sims,

As you know, pursuant to section 30(1) of the *Representative for Children and Youth Act*, the Select Standing Committee on Children and Youth is undertaking a comprehensive review of the Act to determine whether the functions of the Representative described in s. 6 are still required to ensure that the needs of children, youth and young adults as defined in that section are met.

I am pleased to make our initial submission in this matter, which sets out the history of the evolution of the Office of the Representative for Children and Youth and of previous reviews and proposals for amendments, together with a discussion of areas of concern that have been identified in the past and currently. In some cases, there are direct recommendations for amendments to the Act while other issues and options are identified and discussed to hopefully assist the Committee in its deliberations.

I hope this initial submission will be helpful to the Committee in identifying the key issues and options for statutory reform. I look forward to discussing these matters with Committee Members, and to making a final submission on the issues at the conclusion of the Committee's consultation process.

Sincerely,

Dr. Jennifer Charlesworth
Representative for Children and Youth

pc: Ms. Karan Riarh
Committee Clerk, Legislative Assembly

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INTRODUCTION

Section 30 of the *Representative for Children and Youth Act* (*RCY Act,* or Act) mandates the Select Standing Committee on Children and Youth ("the Committee") to carry out a comprehensive review of the Act every five years according to a schedule, which requires the next comprehensive review to begin before March 31, 2022, and which will likely carry on through the ensuing several months.

This submission sets out the Representative for Children and Youth's ("the Representative's") initial recommendations for amendments to the *RCY Act* and identifies some additional options for consideration by the Committee. It is hoped that this submission will be helpful to the Committee and others in serving as a platform for the identification of key issues and considerations. It is also hoped that once other parties have had an opportunity to make submissions to the Committee, the Representative will have an opportunity to consider these and to make a second and final submission.

It is best to situate this submission by beginning with some background information which recounts a brief history of the antecedents to the *RCY Act*, the development of the Act itself and previous reviews and recommendations of the Committee as well as consequent amendments.

BACKGROUND

The creation of the Office of the Representative for Children and Youth, which has now been in place for 15 years, was preceded by 10 years of earlier attempts to establish external individual and systemic advocacy in relation to publicly funded services for children, youth and families.

The Legislative Assembly appointed British Columbia's first Children's Advocate in 1995.[1] The Child, Youth and Family Advocate (the Advocate) was an Independent Officer of the Legislature who was mandated to:

"• *ensure that the rights and interests of children, youth and their families relating to designated services are protected and advanced and that their views are heard and considered;*

- *ensure that children, youths and their families have access to fair, responsive and appropriate complaint and review processes at all stages in the provision of designated services,*
- *provide information and advice to government and communities about the availability, effectiveness, responsiveness and relevance of designated services; and*
- *promote and coordinate in communities the establishment of advocacy services for children, youths and their families."* [2]

Shortly after the creation of the Advocate's office, Judge Thomas Gove completed his inquiry into the death of Matthew Vaudreuil.[3] A key recommendation arising from the Gove Inquiry was the creation of a Children's Commissioner. Although the Children's Commissioner was not an Independent Officer of the Legislature but rather reported to the Attorney General, the mandate of this new and additional office, which was created by statute, provided for fairly detailed oversight of the activities of ministries and public bodies, and in summary included:

- collect information about the deaths of all children (not just those in receipt of designated services) as well as about critical injuries sustained by children while receiving designated services, investigate those deaths and injuries, and make recommendation concerning them
- set standards to be applied by prescribed ministries or agencies of the government to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to children, and monitor whether ministries and agencies are meeting those standards
- review and resolve complaints about breaches of the rights of children in care, and decisions concerning the provision of designated services to children
- monitor whether the standards set by the director for plans of care are being met, identify plans that need to be reviewed by the director and conduct random audits of plans of care
- collect data about, and conduct or encourage research into, matters relevant to services for children; and
- provide public education and information designed to promote an understanding of, and to invite public comment on, the commission's work.[4]

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1 *Child, Youth and Family Advocacy Act* (SBC 1996) Chapter 47.
2 *Ibid*, section 2
3 *Report of the Gove Inquiry into Child Protection in British Columbia*, Victoria BC, Queen's Printer, 1995
4 *Children's Commission Act* (SBC 1997) Chapter 11, section 4.

Another key outcome of the Gove Inquiry was the creation of the Ministry of Children and Family Development (MCFD), which incorporated child, youth and family programs from the ministries of then-Social Services, Education, Health, Women's Equality and Attorney General.

The government's core services review, which began in 2001, led to a number of changes in public services. In 2002, the Children's Commissioner and the independent office of the Advocate were eliminated and replaced by a Child and Youth Officer who, like the Children's Commissioner, reported to government (the Attorney General) rather than the Legislature and whose primary function was:

> *To provide support to children, youth and their families in obtaining relevant services and to provide independent observations and advice to government about the state of services provided or funded by government to children and youth …*[5]

The Child and Youth Officer's advocacy mandate was very limited: while the office could provide information and advice to children, youth and their families, individual advocacy services could only be provided in *"extraordinary circumstances."*[6]

With the dissolution of the Children's Commission, the Coroners Service was given the responsibility for reviewing child deaths.

The *Representative for Children and Youth Act (RCY Act)* was enacted in May 2006 with bi-partisan support, immediately following the government's acceptance of the April 7, 2006 recommendations by the Honourable Ted Hughes, Q.C. in his *BC Children and Youth Review*, otherwise known as the *Hughes Review.*[7]

The *Hughes Review*, which was prompted by the deaths of two Indigenous children who were receiving child welfare services, recognized that despite the three attempts in the preceding 10 years to help children, youth and families navigate the child welfare system and hold that system more publicly accountable, public and professional confidence in the child welfare system was low.

Hughes' *RCY Act* recommendations flowed directly from his terms of reference, which instructed him to conduct an independent review of B.C.'s child protection system and to make recommendations regarding improved advocacy, child death reviews and monitoring of the ministry's performance.

The RCY Act was enacted in May 2006. It was incrementally brought into force in three stages between November 2006 and June 1, 2007, at which time all the functions of the Office – individual advocacy, investigations and monitoring – were operational.

From the outset, the *RCY Act* included s. 30, a provision requiring a standing committee of the Legislative Assembly – the Select Standing Committee on Children and Youth – to undertake a five-year review of the statute. Significantly, the statutory focus of the s. 30 review was not general and routine,

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[5] *Office for Children and Youth Act* (SBC 2002) Chapter 50, section 3

[6] *Ibid.*

[7] Honourable Ted Hughes QC. *BC Children and Youth Review: An Independent Review of BC's Child Protection System*, Victoria BC, April 7, 2006

such as to assess the effectiveness of the legislation and make recommendations for change. Instead, the Committee's specific statutory task was:

> *30." To determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children are met, the standing committee, within 5 years of the coming into force of section 6, must undertake a comprehensive review of this Act or a review of portions of this Act."* (emphasis added)

That same task and criteria remain today, except that *"young adults"* was added in 2013,[8] reflecting the newly expanded advocacy mandate to include young adults in receipt of specified services.[9]

This need for periodic review to determine whether the functions of the Representative are "still required" arose from Hughes' own uncertainty about whether the day may come when such external oversight – in particular, the monitoring function – may be unnecessary because the ministry's own performance measurement system, quality assurance programs and public reporting may be sufficient.[10]

There were three minor amendments to the Act before the first comprehensive review was undertaken:

- On June 21, 2007, a minor amendment to the Act consequential on the new *Public Inquiry Act*, S.B.C. 2007, c. 9 was proclaimed into force by B.C. Reg. 226/2007. This amendment changed the way in which the Act described the Representative's power to compel evidence in an investigation.
- On Sept. 15, 2007, an amendment to the Act consequential on the new *Coroners Act*, S.B.C. 2007, c. 15 was proclaimed into force by B.C. Reg. 298/2007. This amendment clarified the relationship between a Representative's critical injury or death investigation and the exercise of the Coroner's mandate.
- On May 29, 2008, an amendment to clarify the Representative's powers to disclose information by adding s. 23 (4.1) came into force: *Miscellaneous Statutes Amendment Act (No. 2)*, 2008, S.B.C. 2008, c. 42. This amendment came into force when that Act received Royal Assent on May 29, 2008.

The Select Standing Committee on Children and Youth conducted the first five-year review in 2011 and 2012. The Committee's review process included hearing from the Representative, the Deputy Minister of MCFD, and the Honourable Ted Hughes, QC, as well as receiving written submissions from key stakeholders and the public.

In May 2012, after hearing *"considerable support for the legislation and the work of the Representative,"* the Committee unanimously concluded that all the Representative's functions ought to be preserved, and made seven recommendations to improve the operation of the legislation:

> *"This report contains seven recommendations that are designed to enhance the functioning of the legislation while the Representative continues to provide valuable services for children and youth and their families. These include recommendations to expand and review parts of the Representative's mandate, improve provisions for appointing an acting Representative, facilitate information sharing*

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[8] *Miscellaneous Statutes Amendment Act* (SBC 2013), Chapter 12, ss. 30-37.

[9] In February 2022, "young adults" was re-described as "included adults" as a result of the *Miscellaneous Statutes Amendment Act (no.2),* 2021. Despite this change, for ease of reference and understanding, *"young adults"* will continue to be used in this submission.

[10] *Supra*, note 6, page 30.

between the Representative's office and public bodies, and strengthen reporting requirements. It is also recommended that the Act be amended to allow for future reviews of the legislation."[11]

Specifically, the seven recommendations were as follows:

1. *Allow for the appointment by the Lieutenant Governor in Council of an acting Representative if the Representative is suspended, the office is vacant or the Representative is temporarily absent because of illness or another reason, and the House is dissolved and the Select Standing Committee on Children and Youth is not constituted.*
2. *Allow the Representative to provide advocacy services to young adults between 19 and 24 years of age who are transitioning into the Community Living BC system and/or have received a reviewable service as defined under the Representative for Children and Youth Act within 15 months of their 19th birthday.*
3. *Require the Select Standing Committee on Children and Youth to complete a review of the Representative's monitoring functions described in section 6(1)(b) by April 1, 2015.*
4. *Authorize the Representative to investigate the critical injury or death of a child if a public body requests and provides written consent despite 13(1)(c).*
5. *Allow the Representative to disclose the results of an individual review with the public body or director responsible for the reviewable service.*
6. *Require the Representative to deliver the service plan to the Speaker before September 30 of each year.*
7. *Require the Select Standing Committee on Children and Youth to undertake a comprehensive review of this Act or a review of portions of this Act every 5 years, with the first 5-year period beginning on April 1, 2012.*

As with the original Hughes recommendations, these recommendations were speedily addressed: in March 2013, all the recommendations were enacted by the Legislature.[12]

As can be seen below, the Committee recommended two discrete reviews of *RCY Act* functions, each of which was incorporated into the current version of s. 30,[13] enacted in 2013:

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.

[11] Select Standing Committee on Children and Youth. *Review of the Representative for Children and Youth Act.* Victoria BC, May, 2012, p.iii

[12] *Supra*, note 8.

[13] With the exception of the recent change of wording from *"young adults"* to *"included adults."* For ease of reference, *"young adults"* will continue to be used in this submission.

The Committee's report described the basis for the earlier review of s. 6(1)(b), which relates to the Representative's monitoring mandate:

> *"The Ministry of Children and Family Development's formal submission to the Committee outlined steps underway to establish a credible system of performance measurement and quality assurance linked to public reporting. To implement the changes contemplated by the Hughes Review, it was proposed that a new provision be added to the Act allowing for the Representative's monitoring, review, and audit functions under section 6(1)(b) to be concluded in two years (excluding the research function), subject to a decision by the Committee and sustained and credible action by the Ministry."*[14]

In 2015, the Committee undertook its review of the s. 6(1)(b) monitoring function and filed a one-page report. The review was informed by a joint letter from the Representative and the MCFD Deputy Minister which:

> *"… described their shared view that the Representative's monitoring functions, including reviewing, auditing and research, remain a required and important aspect of oversight and public accountability of the performance and outcomes of the Ministry of Children and Family Development."*[15]

The Committee concluded:

> *"In accordance with the views of the Representative and the Ministry, the Committee recommends that, in order to ensure the needs of children are effectively met, section 6(1)(b) of the Representative for Children and Youth Act not be amended at this time. The Committee further notes that there will be an opportunity to review this section during the next statutory review of the Act, which is required to be undertaken by the Committee before April 1, 2017, pursuant to section 30(1) of the Act."*[16]

The second full five-year review commenced in 2017. The Committee received 16 written submissions from organizations and individuals, and received presentations from the first Representative, her successor, the Deputy Attorney General and the Honourable Ted Hughes QC.

The Committee released its report[17] in February 2018 and made nine recommendations, as follows:

1. *The Act's definition of designated services be amended to include services or programs provided or funded by government for children with special needs.*
2. *A review of statutory officers' terms of employment be undertaken by the Legislative Assembly. The review should include appointment and remuneration, with a view to determining whether more standardized terms of employment would enhance independence, transparency and accountability. Such a review could include consideration of principles such as whether or not statutory officers' terms should be renewable.*
3. *The Act be amended to allow the Representative for Children and Youth to support, assist, inform and advise young adults who have previously been in care with respect to services and programs necessary to support them in their transition to adulthood.*

[14] *Supra*, note 11, p.9.
[15] Select Standing Committee on Children and Youth. *Statutory Review of Section 6(1)(b) of the Representative for Children and Youth Act, First Report (SBC,2006, c.29*), Victoria BC, March 26, 2015
[16] *Ibid*.
[17] Select Standing Committee on Children and Youth. *Review of the Representative for Children and Youth Act,* Victoria BC, February 28, 2018.

4. *The Act be amended to ensure the Representative has authority to provide advocacy services with respect to programs and services for young adults with special needs that were formerly delivered under the Community Living Authority Act. Further, amendments to the Act should ensure that the Representative's existing mandate with respect to young adults with special needs is expanded in conjunction with the recommendations related to young adults who have previously been in care.*
5. *Section 6(1)(b) of the Act be amended to authorize the Representative to monitor, review, audit and conduct research in respect of prescribed services and reviews by the director under the Child, Family and Community Service Act.*
6. *The Act be amended to a define a young adult as a person aged 19 years of age but under age 26, to align with the eligibility for agreements with adults under section 12.3 of the Child, Family and Community Service Act, and remove the requirement that a young adult is required to have received a reviewable service within the 15 months before the individual's 19th birthday.*
7. *The Act be amended to provide that, where the Representative is investigating a critical injury to a child, the investigation may include events and incidents that occurred after the child reached 19 years of age, where the Representative believes that such investigation raises important issues related to the conduct of a public body delivering a reviewable service.*
8. *Section 30 of the Act be amended to remove the reference to determining whether the functions of the Representative are still required, and to state that the Committee will undertake a comprehensive review, or review of portions of the Act, every five years to ensure the Act is functioning effectively to meet the needs of children and young adults.*
9. *The Act be amended to require that, in undertaking the functions under the Act, the Representative reflect the principles contained in the United Nations Convention on the Rights of the Child.*

In contrast to the speedy and fulsome responses to original *Hughes Review* and to the first five-year statutory review in 2012, to date only one of these nine recommendations has been fully addressed and two others substantially (but not fully) addressed in the more than four years since the Committee's recommendations were submitted in February 2018. Government responses to these three recommendations are described below.

Order-in Council 343/2019, which amended the *Representative for Children and Youth Act Regulation (RCY Regulation)* and which was brought into effect on July 3, 2019, substantially addressed the Committee's first recommendation to clarify the Representative's statutory mandate in relation to services for children and youth with special needs. However, because that regulation change was limited to prescribing services and programs funded by MCFD, some important services for children and youth with special needs that fall under the mandate of the Ministry of Health and health authorities still remain outside the Representative's statutory mandate. These excluded programs are Nursing Support Services, the assessment and diagnostic services for children and youth with special needs provided through the BC Autism Assessment (BCAAN) and the Complex Developmental Behavioural Conditions (CDBC) Networks, and services for children with special needs provided through Sunnyhill and Queen Alexandra hospitals.

That same 2019 Order-in-Council extended the Representative's advocacy mandate to include young adults who are eligible for an Agreement with Young Adults (AYA) under s. 12.3 of the *Child, Family and Community Service Act (CFCS Act)* or the Provincial Tuition Waiver Program for former youth in care administered by the Ministry of Advanced Education, Skills and Training. While this was a step forward, it only partially addressed the Committee's Recommendation 3, which contemplated the Representative being given a mandate to advocate in relation to a much broader suite of transitional support services for transitioning young adults which, in the Committee's view, should:

> *"… be carefully defined so that the Representative's mandate does not inadvertently exclude young adults who would benefit from support in accessing services they need for a successful transition into adulthood."*[18]

A broader suite of transitional services could include, for example, mental heath and addiction services, and housing.

It is noted as well that the Committee recommended that this expanded advocacy mandate in relation to young adults include young people who had *"previously been in care"* (i.e., at any previous time) but, as will be discussed later, the expanded mandate that has actually been implemented is much narrower because AYA eligibility criteria is limited to only those who have *"aged out"* of care at 19.

The Committee's Recommendation 6 to change the definition of *"young adult"* to bring that (increased) age range into alignment with the definition of young adult in the *Child, Family and Community Service Regulation (CFCS Regulation)* was fully addressed by way of a miscellaneous statutes amendment in fall 2021, which was brought into force on Feb. 28, 2022.[19] Given that four years have passed since the Committee filed its report and that only three have been fully or partially addressed, the Representative will re-surface these outstanding issues,[20] along with additional concerns. Before doing so, it is necessary to discuss the central question set out in s. 30 of the *RCY Act* which requires the Committee to again consider whether the Representative's functions described in s. 6 – advocacy, investigations and monitoring – are still required.

[18] *Supra*, note 17, p.10

[19] Bill-21 *Miscellaneous Statutes Amendment Act (No.2)* 2021. "Young adult" is re-described as "included adult"; the age range is increased to under age 27; and the included adult must have received a reviewable service at any previous time (not within 15 months of the 19th birthday) or be in receipt of or eligible for Community Living BC services. Brought into force by Order-in-Council 111/2022, February 28, 2022

[20] Recommendation 2, regarding reviewing the terms of employment of statutory officers, will not be re-surfaced because it goes beyond the mandate of the Representative and this review.

DISCUSSION

The Representative's Functions Are Still Necessary – The Section 30 Test

This section explains why the Representative's oversight functions remain highly relevant and necessary. The individual and systemic needs of children and young adults in B.C. – as well as their families and communities – too often go unmet, and they can and do benefit from the work of the Representative.

The test for the Committee to assess, as set out in s. 30 of the *RCY Act,* is clear:

> *To determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children, and included adults (young adults) are met …* ("young adults" added for clarity)

There are two questions embedded in that test. First, are the needs of children and young adults being met? Second, are the functions of the Representative still required?

We readily acknowledge from the outset that, without doubt, there have been some substantive improvements in services to children and young adults in the past several years. A few examples include:

- a consistently declining number of children in care such that, as of Dec. 31, 2021 there were 5,021 children in care, which is the lowest point in more than 20 years.[21]
- improvements in educational outcomes for children in care.[22]
- expanded eligibility and supports for Agreements with Young Adults (AYA) for young people who have aged out of care or Youth Agreements, with some improvements in uptake to that program[23] as well as several recently announced program initiatives, in alignment with previous recommendations of the Representative, to provide substantively improved supports to former youth in care in the coming years.[24]

[21] Data is drawn from MCFD's Corporate Data Warehouse.

[22] See, Representative for Children and Youth. *A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood.* Victoria BC, 2020.

[23] *Ibid*.

[24] 24. BC Budget 2022 enables: emergency measures introduced during the pandemic – including Temporary Housing Agreements, Temporary Support Agreements, and increased flexibility of the AYA program – will be made permanent. Beginning in 2022/23, there will be a new $600 a month rent supplement for youth leaving care. Youth Transitions navigators will be available to support youth as young as 14 to access the services in their transition to adulthood. The following year will see the expansion of the Agreements with Young Adults program to include counselling, medical benefits, increased life-skills training – and the introduction of an earning exemption. In 2024 /2025, young adults will receive a guaranteed income benefit from age 19 to 20 and a further 84 months of financial support if they are participating in approved programs. (Source: MCFD Intranet)

- establishment of the Provincial Tuition Waiver Program to support the post-secondary education and training of former children in care.
- substantive new investments in enhanced mental health and addictions services for children, youth and young adults, with some progress in implementation of these proposed new resources.

While some considerable progress has been made on a variety of fronts, it is nonetheless clear that glaring gaps, inadequacies and inequities in services to children, youth and young adults remain and that these concerns are current and continuing, not historical. While the overall number of children in care has declined, Indigenous children continue to be vastly over-represented: Indigenous children in B.C. are over 18 times more likely than non-Indigenous children to be in the care of the government.[25] The disturbing themes of the stories and experiences of many of these First Nations, Métis, Inuit and Urban Indigenous children and youth in care are reflected in the 2021 RCY report, *Skye's Legacy: A focus on belonging*.

Further, RCY investigation, monitoring and special reports over the past three years alone have documented in detail systemic shortcomings across different service systems, examples of which include:

- three reports on services for children and youth with special needs – known, in short, as *Alone and Afraid, Left Out* and *Excluded*[26] – have exposed serious and wide-ranging service gaps and inequities, and have recommended systemic reform.
- despite the modest progress made in respect of AYA's, tuition waivers and educational outcomes for children in care, *A Parent's Duty; Government's Obligation to Youth Transitioning into Adulthood (2020)* documented in detail the distressingly poor outcomes of young adults who transition from care and how government as parent has failed to comprehensively address those needs, again recommending systemic reform.[27]
- two reports on substance use services[28] documented the very limited range, availability and accessibility of youth-specific and culturally appropriate substance use services for youth, again identifying the need for and recommending the development of a comprehensive system of services.
- on the mental health front, three reports have identified systemic issues and needs for service improvements in relation to youth who are detained in hospital under the *Mental Health Act* and for children and youth with mental health and complex needs who engage in non-suicidal self injury.[29]

Notably, in several of the reports referenced above, it is youth themselves who have told the Representative that service systems have not worked well in addressing their needs.

[25] Ministry of Children and Family Development, *2021/22 – 2023/24 Service Plan*. Victoria BC, April 2021

[26] The three reports include: *Alone and Afraid: Lessons learned from the ordeal of a child with special needs and his family* (2018); *Left Out: Children and youth with special needs in the pandemic* (2020); and *Excluded: Increased Understanding, Support and Inclusion for Children with FASD and their Families* (2021).

[27] The systemic reforms recommended in relation to transitioning young adults appear, to a substantial degree, to have been supported in the most recent budget. See, note 24.

[28] The two reports are: *Youth Substance Use Services in B.C. – An Update* (2019) and *Time to Listen: Youth Voices on Substance Use* (2018)

[29] The three reports are: *Detained: Rights of children and youth under the Mental Health Act* (2021); *A Way to Cope: Exploring non-suicidal self-injury in B.C. youth* (2020); and *Caught in the Middle* (2019).

Going beyond RCY's public reports and calls for systemic reform on a variety of service fronts, the day-to-day work of the RCY underlines, in very sobering terms, that the needs of too many children, youth and young adults are not being met. In the past five full fiscal years alone – between 2016/17 and 2020/21 – RCY has opened a total of 7,935 advocacy cases where issues have arisen with the provision of services to children and young adults.[30] These calls are made by children, youth, young adults, families, social workers and service providers, and each one represents an individual and/or family crisis within the system, often from a person who does not know where else to turn to navigate B.C.'s complex, daunting and, in many cases, under-resourced child-serving systems.

In the same five-year period, there were 6,160 reports of deaths (529) and critical injuries (5,631) reviewed by the RCY and determined to be *"in-mandate,"* (i.e., satisfying the criteria for death or critical injury). Moreover, the annual number of in-mandate reports of deaths and critical injuries more than doubled (138%) in that time period and is projected to substantively increase (by 34%) again during 2021/22. These increases are likely primarily related to better reporting by MCFD but also likely reflect an overall increase in critical injuries attributable to such factors as the opioid crisis and toxic drug supply (eg., loss of loved ones, overdoses), impacts of the pandemic on mental health resulting in more mental health-related incidents (e.g., suicide attempts, self-injury), increased sexual exploitation and violence, and gang-related activities. Notably, these data regarding deaths and critical injuries exclude a large swath of reporting from health authorities in relation to mental health and addictions services for children and youth because health authorities are now just at the very beginning stages of reporting such incidents to the Representative. Moreover, the data only capture reports of deaths and critical injuries that were determined to be in-mandate and therefore exclude many serious but nonetheless non-mandate reportable circumstances, such as runaways, being missing, less serious harm that does not meet the threshold of a critical injury, harm to others, and so on.

These large numbers reflect real children and young adults who have had adverse experiences while receiving services and are another testament to the long-standing fact that the needs of the most vulnerable children, youth and young adults in the province are not being met.

Since the needs of many children, youth and young adults continue to go unmet, the next question is: Are the functions of the Representative still required? In the Representative's view, the answer is clearly a resounding yes. As outlined in the many recent public reports identified above, as well as the continuing high demand for individual advocacy services, it is apparent that the need for systemic reforms to a range of services is still required and is not near to being realized. The need for the Representative to continue to discharge her oversight functions is underscored by the significant and growing incidence of critical injury and death reports. Keeping all these functions in mind, the question is: Without the Representative's work, would the ministries and public bodies involved have identified the needs for systemic reforms with the same degree of rigor, candor and force, and with the same credibility that derives from independent, arms-length monitoring, review and investigation? The answer, we believe, is that the clarity and objectivity of the Representative's independent work remains critically important.

As already acknowledged, there are examples of appreciable progress in several service areas in recent years. It bears mention that these are all areas that have been championed by this Office, and that will continue to be championed. Obviously, full credit for these and other advances should not go to this Office, but the Representative is confident in the belief there would not have been nearly as much

[30] Note that these are the number of cases, not the total number of children and young adults served. Since some cases involve sibling groups, the total numbers of individuals is greater.

progress without the work of RCY's investigation and monitoring teams, and the systemic advocacy this Office brings to bear. What the then-Representative stated in his 2017 submission to the Committee remains equally true today:

> *"To remove or limit one or more of the Representative's functions, this Committee should have before it real and substantial evidence that gives the Committee the confidence to inform the public that the child-serving systems under its mandate are on such a firm, long-term structural footing that the Representative's independent functions in a particular area are no longer necessary."*[31]

In the Representative's view, there is no "real and substantial evidence" to justify such a conclusion.

Is Section 30 Still Required?

The s. 30(1) requirement that the Committee undertake a comprehensive review every five years to determine whether the functions of the Representative are *"still required"* was established from the outset of the Act in 2006, while the s. 30(2) requirement to review the effectiveness of the s. 6(1)(b) – or monitoring – function flowed from the 2012 review. The 2015 review concluded that the monitoring, review, audit and research functions under the latter section remained necessary. That review did not recommend any change to s. 30.

The Committee's 2017 review, by contrast, concluded that ongoing reviews that are based on determining whether the Representative's functions are still required are no longer necessary. Instead, the Committee unanimously recommended that the five-year reviews should focus on reviews of the *RCY Act* itself, not on whether the Representative's functions are still required. The Committee would have had in mind the submission by UNICEF Canada, which aptly described s. 30 as having the *"potential to serve as a sunset provision for some of the Representative's powers."*[32] The Committee also would have considered the BC Association of Social Workers' submission that the Act *"needs to be clear regarding permanence"* of the Office.[33] In making its recommendation, the Committee noted the submission of First Call that s. 30 should be replaced with a mandate to *"periodically review the Act in its entirety to assess how well it is supporting the work that needs to be done to promote and protect the rights of BC's children and youth."*[34] No submissions to the Committee's 2017 statutory review suggested that one of more of the functions of the Representative are no longer required. Indeed, most external submissions recommended expansion of the Representative's mandate. This is the context in which the Committee:

> *… concluded that statutory reviews conducted every five years remain an important responsibility for the Committee, and help ensure that the Act responds to evolving issues in services for children and youth.*[35]

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[31] Representative for Children and Youth. *Review of the Representative for Children and Youth Act.* Victoria BC, submitted to the Select Standing Committee on Children and Youth, November 2017.

[32] UNICEF Canada. *The Legislated Functions of the Representative Can't Be Phased Out: The Rights and Interests of British Columbia Children and Youth Depend On It*. Brief submitted by UNICEF Canada to the Select Standing Committee on Children and Youth as part of the Five-Year Review of the *Representative for Children and Youth Act*, February 9, 2017, p.5

[33] 2017 Special Committee Report, p. 16.

[34] *Ibid*.

[35] *Ibid*.

Consistent with this, the 2017 Committee review recommended that s. 30 be amended:

> *"to remove the reference to determining whether the functions of the Representative are still required", with the five-year reviews focussing on the* RCY Act *itself.* (emphasis added)

No other Canadian child and youth advocacy office is subject to this kind of review. The legislation for five jurisdictions require periodic reviews of, for example, the effectiveness of the statute, but none ask whether one or more of the functions of the child and youth advocacy offices should continue. The remaining Canadian jurisdictions have no statutory review provisions at all.

None of B.C.'s eight other Independent Officers of the Legislature is subject to this kind of review. Only two of them – the Information and Privacy Commissioner and the Human Rights Commissioner – have prescribed statutory review provisions, both of which require reviews by a special committee of the legislation generally, not the need for the officers' functions to exist.[36]

In the more than four years after the 2017 report was published, government has failed to act on the Committee's recommendation to stop reviewing to determine whether the Representative's functions are still required. The Representative urges this Committee to make the same recommendation to government in the clearest terms. The statistics summarized above are a stark reminder that, despite the progress in some areas, the critical needs of far too many children, youth and young adults remain unmet. The history of RCY's engagement over the past 15 years with services to children, youth and young adults further illustrates the chronic and undoubtedly ongoing challenges in meeting those needs. It would be naïve to think that independent, arm's-length monitoring and oversight is not needed now and will not be required in the future.

The need for the Representative's functions has been clear for years, it remains clear, and it will continue to remain so. The time has come for all the current Representative's functions to be recognized as an important and enduring feature of publicly funded services to children, youth and young adults, and their families, in B.C. The Representative fully agrees with the 2017 recommendation that s. 30 be amended to provide for a general periodic review of the *RCY Act,* which is useful since issues relating to the effective functioning of the Act will likely continue to emerge over time.

Further, s. 30(2) is now unnecessary and should be repealed, since the 2015 Committee completed the contemplated assessment of the effectiveness of s. 6(1)(b) by the stipulated time.

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[36] See, s. 80 of the *Freedom of Information and Protection of Privacy Act* (RSBC 1996) c.340 and s. 50.1 of the *Human Rights Code* (RSBC 1996) c.210. The review of the Information and Privacy Commissioner's legislation is every six years, while the Human Rights Commissioner is every five years. As an example, s. 50.1 of the *Human Rights Code* reads:

> *(1) At least once every 5 years, a special committee of the Legislative Assembly must begin a comprehensive review of sections 47.01 to 47.24 of this Code and must submit a report respecting those sections to the Legislative Assembly within one year after the date of the appointment of the special committee.*
>
> *(2) A report submitted under subsection (1) of this section may include any recommended amendments to sections 47.01 to 47.24.*
>
> *(3) For the purposes of subsection (1), the first 5-year period begins on the date that this section comes into force.*

In relation to the current requirements for periodic review of the *RCY Act*, the Representative recommends:

- **Section 30 (1) of the Act be amended to remove the reference to determining whether the functions of the Representative are still required, and to simply state, like the governing statutes of the Information and Privacy Commissioner and the Human Rights Commissioner, that the Committee will undertake a comprehensive review of the Act every five years.**
- **Section 30 (2) of the Act be repealed.**

Situating the Representative's Functions in the International Human Rights Context

Instead of considering whether the current functions of the Representative are still required, in the Representative's view, the questions should be: How can the mandate and functions of the Representative be clarified and improved?; and, what next steps should be taken in the evolution of the role of the Office?

Addressing those questions should begin by looking at the international context.

The *United Nations Convention on the Rights of the Child*

The *United Nations Convention on the Rights of the Child (UNCRC),* sets out the civic, political, legal, social welfare, educational, health and cultural rights of children.[37] The *UNCRC* was ratified by Canada in 1991 and has been ratified by every member of the U.N., except the United States.

Having ratified the Convention, Canada has an obligation to ensure that its legislation, policies, programs and services affecting children comply with it. Article 4 states:

> *States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.*

The responsibility to implement this obligation is shared by the provinces and territories, since most areas of responsibility for matters affecting children are under provincial and territorial jurisdiction. Reflecting these jurisdictional responsibilities, the governing statutes of comparable child and youth advocacy offices in Manitoba, Prince Edward Island, Yukon and Nunavut all make reference to the *UNCRC.*

Although it is the most universally accepted human rights instrument in the world, and although statutes in several other Canadian jurisdictions have referenced it,[38] the *UNCRC* is not expressly referenced in any legislation pertaining to children in B.C. In the 2017 statutory review, the Representative, along with

[37] Note that the *United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)* will be discussed later in relation to services to young adults eligible for CLBC services. In the Representative's view, the *UNCRC* is sufficient to address the needs and circumstances of children with disabilities. However, since the *UNCRC* only applies to children under the age of 18 years, there is a gap in relation to young adults with disabilities who are eligible for CLBC services that can be filled by referencing the *UNCRPD.*

[38] Examples are: the federal *Youth Criminal Justice Act;* child welfare legislation in Yukon, N.W.T. and Nunavut; and child and youth advocate legislation in Manitoba, P.E.I., Yukon and Nunavut.

other parties such as UNICEF Canada and First Call, recommended that the *RCY Act* be amended to reference the *UNCRC.* In response, the Committee recommended:

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

Four years later, this recommendation has not been actioned by government. Unlike the other 2017 statutory review recommendations, however, this majority recommendation was not unanimously supported by all members of the Committee. and clearly prompted debate:

> *Committee Members did not come to a unanimous recommendation on the issue of whether the UN Convention should be referenced in the Act. Some Members wanted to more fully explore the legal implications before coming to a decision on the issue, particularly given the breadth of the subject matters in the UN Convention. Some Members observed that the UN Convention already informs how the Office of the Representative for Children and Youth approaches its work, and a reference to the UN Convention in the Act may be unnecessary. Additional objections included the possibility of overemphasizing international human rights agreements relative to the goal of child protection.*
>
> *Other Members noted that several similar Acts in other provinces and territories reference the UN Convention as an interpretive guide for the work of their independent child and youth representatives. Some Members argued that international standards for human rights are compatible with, and reinforce, the goal of an effective child welfare system. Given that the UN Convention is the most-ratified of all international conventions, some Members considered it to represent an international consensus that is worth reflecting in the legislation."*[39]

Regarding concerns about legal implications, Canadian courts have held that the *UNCRC* does not have the force and effect of domestic law unless it is directly incorporated by reference into a domestic statute; however, the values reflected in international treaties or conventions such as the *UNCRC* may help inform the contextual approach to statutory interpretation and judicial review.[40] The Representative accepts the opinion that simply referencing the *UNCRC* in her governing statute would not accord her any greater legal powers or authority than is currently set out in the *RCY Act*.

The Representative routinely references the *UNCRC* as a guiding framework in carrying out her functions, including in preparing public reports, and will continue to do so. This is consistent with guidance from the Supreme Court of Canada on how international conventions can help inform statutory interpretation. While the Representative acknowledges that the Court's guidance clarifies that it is not legally necessary to include reference to the *UNCRC* in the *RCY Act,* she believes it is important to do so because this would visibly and affirmatively reflect the province's commitment to the values, principles and aspirations set out for children in the *UNCRC.*

How would this be done? A straightforward approach would be to amend the *RCY Act* to say that the Representative must consider the *UNCRC* in carrying out her functions. This would affirm the Representative's existing commitment to doing so and make that commitment permanent, for future Representatives. This is the approach that the 2017 Special Committee recommended (i.e., that the

[39] *Supra*, note 17, page 18.

[40] *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817. More recently, see *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, and *Li v. British Columbia,* 2021 BCCA 256.

RCY Act "be amended to require that, in undertaking the functions under the Act, the Representative reflect the principles contained in the United Nations Convention on the Rights of the Child."[41]

Another approach that others may propose, as was the case in the 2017 statutory review,[42] would be to broaden the Representative's functions to include a responsibility to take a more affirmative and proactive role in the education, promotion and monitoring of the rights of children set out in the *UNCRC.* In this regard, the United Nations Committee on the Rights of the Child has pressed for the establishment of independent bodies with responsibility for promoting and protecting children's rights.[43] As well, Article 42 of the *UNCRC* provides:

> *States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

The Representative recognizes that taking on an affirmative role in the education, promotion and monitoring of the rights of children as set out in the *UNCRC* could represent a significant addition to the Representative's functions. Admittedly, this could have appreciable resource implications and, given current stretched capacity, could affect how the Representative's current functions are carried out. Moreover, such an enhancement to her role could, due to the broad remit of the *UNCRC,* imply that the Representative's jurisdiction also be broadened to include *all* publicly funded services to *all* children instead of, as is now the case, being principally limited to a narrower population of designated and reviewable services to vulnerable children, youth and young adults. This is a matter that will be discussed later.

In relation to the *United Nations Convention on the Rights of the Child*, the Representative recommends:

- **At minimum, Section 6 of the Act be amended to require the Representative to take into account the *United Nations Convention on the Rights of the Child* in carrying out her functions in relation to children and youth.**[44]
- **The Committee also give consideration to expanding the Representative's functions to include the education, promotion and monitoring of the rights of children and youth set out in the *United Nations Convention on the Rights of the Child.***

The *United Nations Declaration on the Rights of Indigenous Peoples*

The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* of 2007 – which sets out individual and collective rights of Indigenous Peoples to cultural and ceremonial expression, identity, language, employment, health, education and other matters – was ratified by Canada in 2016.[45]

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[41] Recommendation 9.

[42] For example, by UNICEF Canada and First Call.

[43] United Nations Committee on the Rights of the Child. *General Comment No.2.* Thirty Second Session, January 2003, p.2.

[44] "Youth" is defined in s. 1 of the *RCY Act* as a person who is 16 years of age or older but under the age of 19 years of age, while "child' is defined as a person under 19 years of age. Whenever "children and youth" is used in this submission, it means persons under 19 years of age.

[45] This was followed by the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* in 2021.

In 2019, B.C. enacted the *Declaration on the Rights of Indigenous Peoples Act (DRIPA).* Section 2 states *DRIPA*'s purposes, which are: *"to affirm the application of the Declaration to the laws of British Columbia"; "to contribute to the implementation of the Declaration";* and *"to support the affirmation of, and develop relationships with, Indigenous governing bodies."* Section 4 requires the provincial government to *"prepare and implement an action plan to achieve the objectives of the Declaration."* Section 3 of *DRIPA* states that:

> *"In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration."*

The Representative's view at this time is that *DRIPA* would not appear to require amendments to the *RCY Act* to achieve consistency between them because, on the face of it, the functions of the Representative do not appear to be in conflict with, nor inconsistent with, the provisions of the Declaration. The Representative nonetheless acknowledges that the determination of whether amendments are needed to ensure consistency must be made by government in consultation and cooperation with Indigenous Peoples.

While *UNDRIP* speaks to a broad range of individual and collective rights applicable to children and adults alike, several provisions address children and families, specifically Articles 7, 14, 17 and 21. As well, Article 22 states:

> *Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*

The *RCY Act* was borne out the *Hughes Review*, which was prompted by the deaths of two Indigenous children who were receiving child welfare services. Colonization, residential schools, the "sixties scoop" of Indigenous children into the child welfare system, and the continuing racism and discrimination evidenced by the recent federal human rights rulings and settlements, have left a tragic legacy of an astounding degree of over-involvement of the child welfare system in the lives of Indigenous children and families. As noted earlier, an Indigenous child in B.C. is over 18 times more likely than a non-Indigenous child to be in government care. Given this context – and while acknowledging that it may not be legally necessary – it is, in the Representative's view, morally necessary that the Representative be required to take into account *UNDRIP* when carrying out her functions under the Act.[46]

Moreover, given the context noted above, the *RCY Act* seems dated and inadequate to the task of reflecting the history, experiences, needs and interests of Indigenous children and families, and young adults. As such, the *RCY Act* is, at the least, inconsistent with the spirit and intent of the Declaration. Indeed, "aboriginal" is only referenced twice in the Act. Section 7(2) provides that, before appointing a Deputy Representative, there must be consideration of *"the person's understanding of or involvement in the lives of aboriginal children and families in British Columbia."* If such qualifications are to be expressed in statute, it seems inadequate to limit them to just the Deputy Representative role. As well, s. 19(1) provides that the Representative's annual report must address *"the representative's work with aboriginal children and their families."*

[46] Note also that the United Nations has provided detailed commentary on how the *UNCRC* should be applied to Indigenous children. See, United Nations Committee on the Rights of the Child. *General Comment No.11: Indigenous children and their rights under the Convention*. Geneva, February 12, 2009.

Otherwise, there is no preamble or statement of principle in the Act that addresses the history of colonialism and racism, and the unique circumstances and needs of Indigenous peoples. Indigenous peoples are not defined in the Act. While the Representative has functions directly related to families, 'family" is not defined in the Act, nor the broader conception of family in an Indigenous context. The central importance of culture, tradition and language to Indigenous Peoples is not mentioned. There is no requirement for notice to First Nations or the Métis Nation when the Representative becomes actively involved in a child's life. There is no requirement for investigation cultural liaisons or cultural navigators. There are no provisions which enable appropriate data sharing with First Nations and the Métis Nation.

It is true that these and other relevant issues can be – and indeed are – addressed administratively[47] by the Representative, but given the legacy of colonialism, the consequent frequency of involvement, emerging self-governance (see below), and the unique circumstances and needs of Indigenous Peoples, there is no doubt that the Act could be strengthened in this regard.

In relation to the *United Nations Declaration on the Rights of Indigenous Peoples*, the Representative recommends:

- **At minimum, Section 6 of the Act be amended to require the Representative to take into account the *United Nations Declaration on the Rights of Indigenous Peoples* in carrying out her functions under the Act.**
- **The Committee also engage in a process of consultation with First Nations, Métis, Inuit and Urban Indigenous Peoples about means by which the Act can be strengthened to better reflect the experiences, needs and interests of First Nations, Métis, Inuit, and Urban Indigenous Peoples.**

Implications of Evolving Indigenous Jurisdiction

In 2019, the federal government enacted, *An Act respecting First Nations, Inuit and Métis children and families*, which is intended as a contribution to the implementation of *UNDRIP.* The legislation, which came into force in January 2020, establishes national principles and minimum standards that must be met by all service providers. The Act affirms the right of Indigenous Peoples to self-government, which includes jurisdiction over child and family services[48] and sets out processes by which Indigenous Governing Bodies[49] may establish and administer their own laws in relation to child and family services, subject to the principles and minimum standards set out in the Act.

Several Nations, or Indigenous Governing Bodies, in B.C. are in the course of designing their own laws and systems of services to support the exercise of jurisdiction over child and family services. Undoubtedly,

[47] Examples of administrative actions include: postings for all positions include a preference for Indigenous candidates (and sometimes Indigenous-only candidates) as well as a requirement for understanding of the history and circumstances of Indigenous Peoples; there is extensive staff training in cultural humility and safety; there is a full time RCY Knowledge Keeper and developing roster of Matriarchs and Elders; there are dedicated positions for Indigenous community liaison and monitoring; Indigenous research methodologies are in the course of being incorporated; and there are protocol agreements with the First Nations Leadership Council and the Métis Nation.

[48] "Child and family services" is defined in s. 1 as *"services to support children and families, including prevention services, early intervention services and child protection services."*

[49] An "Indigenous Governing Body" is defined in s. 1 as *"a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982."*

more will do so in the coming years. Critically, once an Indigenous Governing Body establishes full jurisdiction, the Representative, being a creature of provincial legislation, will no longer have jurisdiction over those services. These changes will obviously have significant impact on the Representative's work in the years to come, which the Representative will closely monitor. Given this, it is an area that will be appropriate for the ensuing five-year statutory review in 2027.

In the interim, however, the question has been raised about how Indigenous Governing Bodies that have asserted jurisdiction might, should they choose to do so, implement the equivalent functions of the Representative (i.e., individual advocacy, systemic reviews, and/or investigations). Of course, internal organizational mechanisms may be developed by Indigenous Governing Bodies on their own. Another option, however, could be for an Indigenous Governing Body to engage the Representative to directly carry out one or more of those functions and/or to assist them in developing their own internal capacity. Informal inquiries have already been made by some Indigenous Governing Bodies about exploring the possibility of such ongoing relationships with the Representative. Given this, there should be a provision in the *RCY Act* to enable the Representative to enter into agreements with Indigenous Governing Bodies to support them in developing the internal capacity to carry out one or more of the functions of the Representative or for those bodies to engage the Representative to directly carry out one or more of her functions. In this regard, while s. 22 now enables the Representative to *"enter into agreements for the purpose of exercising the powers and performing the functions and duties"* under the Act, we suggest that, for clarity, s. 22 should be amended to expressly permit the Representative to enter into agreements with Indigenous Governing Bodies under which the Representative may exercise her powers, duties and functions as a service to them.

Should such agreements arise, and should they involve the Representative directly carrying out one of her functions, questions could be raised about the Representative's authority under the *RCY Act*, in particular to compel the production of information and to keep that information confidential. In this regard, the production of information is a matter that can be built into agreements as necessary, while the current provisions in the Act strictly protecting the confidentiality of information would equally apply to any work the Representative carries out by way of an agreement established under the Act.

In recommending this, the Representative does not presume that one or more Indigenous Governing Bodies will turn to the Representative for services, but the option should at least be available should they choose to do so.

In relation to the assertion of jurisdiction over child and family services by First Nations, Métis and Inuit peoples, the Representative recommends:

- **Section 22 of the Act be amended to clearly enable the Representative to enter into agreements with Indigenous Governing Bodies exercising jurisdiction over child and family services to engage the Representative to assist them in developing their own internal capacity to perform one or more of the Representative's functions, or for the Representative to directly perform one or more of her functions under the Act at the request of the Indigenous Governing Body.**

Clarifying the Functions of the Representative: Systemic Advocacy

The question about whether the functions of the Representative would still be required was initially prompted by Hughes himself, who wrote, before the legislation was enacted, in relation to the Representative's monitoring mandate:

> *"This may not be a permanent aspect of its mandate. As discussed below, it is unusual to have an external body overseeing the functioning of a government ministry. This is essential at this time, to restore public confidence in the child welfare system, but it may not always be necessary."* (p.30[50])

When the *RCY Act* was enacted, however, the Representative's monitoring mandate did not solely concern child welfare nor the functioning of a single ministry (MCFD). The monitoring mandate is described in s. 6 (1)(b) *RCY Act* as:

> *… 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.*

"Designated services" are defined in s. 1 as including:

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

Section 6(1)(b) therefore focusses the Representative's monitoring, review, audit and research functions on the provision of designated services by one or more public bodies. These services were and continue to be administered not just by MCFD but also several other ministries and public bodies, including: the Ministry of Health and health authorities (and, since 2017, the Ministry of Mental Health and Addictions); Community Living BC (CLBC) and the Ministry of Social Development and Poverty Reduction, and the Ministry of Education due to the transfer of child care services to that ministry in 2022. Clearly, the monitoring mandate is not, and never has been, limited to just child welfare services, nor to just MCFD.

This broader scope of the Representative's monitoring mandate is evidenced in practice by the major reports mentioned earlier that were carried out in the past three years, some of which were carried out under the monitoring mandate and called for systemic reform of service systems – in particular, mental health services for children and youth (including hospital services administered by health authorities),

[50] *Supra*, note 6.

addictions services for youth (administered by health authorities), and transitional support services for young people who have left care (administered by Social Development and Poverty Reduction, Attorney General, health authorities, CLBC, and Advanced Education and Skills Development, in addition to MCFD). Each of these recent reports, and earlier monitoring reports on topics such as social worker staffing and educational services for children in care,[51] called for broad systemic changes, in keeping with the monitoring mandate's expressed purpose of *"making recommendations to improve the effectiveness and responsiveness of that service,"* (i.e, systemic reform). Put another way, the statutory mandate to "*monitor, review, audit and conduct research"* are means by which *systemic advocacy* is informed. Similarly, the subjects of the Representative's investigation and aggregate review reports are selected precisely because they are emblematic of the identified need for systemic reforms.

Hughes himself recognized that systemic advocacy would be an important role for the Representative; he defined systemic advocacy as:

"… working toward positive change in policies, practice and service delivery in child welfare." [52]

Yet, although systemic advocacy is a primary purpose of the Office that is implicit in the *RCY Act* and explicit in practice, the Act is oddly silent about this central function. An amendment in this regard would clarify and affirm that the Representative's functions are not just case-specific, but are also oriented to achieving systemic improvements to better serve all children and youth, and their families and communities.

In relation to systemic advocacy, the Representative recommends:

- **Section 6 of the Act be amended to expressly include systemic advocacy as a primary function of the Representative, linking this function to the current monitoring mandate.**

Clarifying Who and What Services for Children and Youth Should Be Included

The jurisdiction of RCY is rooted in the *Hughes Review,* in particular arising from serious concerns about children involved in the child welfare system, who are a sub-population of children and youth who have need for extra support services from government (i.e., young people who, otherwise put, are vulnerable children). Yet RCY's jurisdiction, of course, extends well beyond child welfare to include additional children and youth with extra support needs. The investigation and review function includes *"reviewable services,"* which are defined in s. 1 as:

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

[51] See, Representative for Children and Youth. *The Thin Front Line: MCFD staffing crunch leaves social workers over-burdened, B.C. children under-protected* (2015) and *Room for Improvement: Toward better education outcomes for children in care* (2017).

[52] *Supra*, note 6, page 15. See also, pages 29-30.

For the purposes of the Representative's advocacy and monitoring mandates in relation to children, *"designated services"* are defined in s. 1 as including a broader range of services, which in turn expands the range of eligible children:

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

Additional reviewable and designated services or programs prescribed under s. 29(2)(a) by the *RCY Regulation* in relation to children include: services or programs under the *Youth Criminal Justice Act* (Canada) and the child in home of a relative (CIHR) program under s. 6 of the *Employment and Assistance Regulation.*[53] Further, the *RCY Regulation* prescribes services and programs for children with special needs provided or funded by the ministry or minister responsible for the *Child, Family and Community Service Act* (i.e., MCFD) as *"designated services"* for the purposes of the Representative's advocacy and monitoring function.

As can be seen, the definitions of designated and reviewable services are principally targeted to children and youth with extra support needs, but not entirely so. The inclusion of child care services can be seen to be inconsistent with the principal focus of the legislation on vulnerable children and youth. While some components of child care services, such as Supported Child Development programs for children with special needs or the use of child care as a protective measure in child protection circumstances, are obviously directed to vulnerable children, the vast majority of child care services embrace the general child population. This begs the question about whether the mandate of the Representative should be broadened such that it becomes a "full service" office with a broad mandate that includes, in effect, all publicly funded services for all children, as was suggested in some submissions in the 2017 review.[54]

Such an approach would align the Representative's mandate in relation to children with the broad jurisdiction that the Ombudsperson and the Human Rights Commissioner have over all publicly funded services in B.C. It is also an approach that is employed in some other jurisdictions in Canada and internationally, such as New Zealand, England and several European countries. In Canada, the equivalent child and youth advocate offices in Saskatchewan, New Brunswick, Newfoundland, and Yukon have jurisdiction over all publicly funded services for all children. Furthermore, such an approach would intersect with the potential re-framing of the role of the Representative that was discussed earlier (i.e.,

[53] Note that s. 6 of the *Employment and Assistance Regulation* was repealed in 2010 but the *Representative for Children and Youth Act Regulation* has not been amended to reflect this change. Admissions to the CIHR program were terminated in 2010, resulting in a progressively declining caseload which was only 477 on Dec. 21, 2020. Once all of the ("grandfathered") children originally on the 2010 caseload reach the age of majority (or their circumstances change earlier so that they are no longer eligible), the caseload will entirely disappear.

[54] From, for example, UNICEF Canada and First Call.

to include the education, promotion and monitoring of children's human rights). These rights apply, of course, to all children and go beyond, including not only the rights set out in domestic legislation (such as the *CFCS Act*) and extend to the *UNCRC* and *UNDRIP.* In that regard, the United Nations Committee on the Rights of the Child has pressed for the establishment of independent bodies with responsibility for promoting and protecting children's rights:

> *It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights.*[55]

Obviously, there could be appreciable resource implications for the Representative's Office if a decision is made to substantially broaden its scope to include all publicly funded services to all children, together with including the education, promotion and monitoring of children's human rights as a central purpose of the Office.

If, however, a decision is made to retain services to vulnerable children as the primary focus and purpose of the Office, changes are nonetheless required to clarify the Representative's mandate. As can be seen above, designated and reviewable services are described in the Act in a variety of different and, quite frankly, muddled ways:

- generically (e.g., *"mental health services for children")*
- generically but limiting that generic description by specifying the ministry responsible (e.g., services for children and youth with special needs but only those provided or funded by the ministry responsible for the *Child, Family and Community Service Act)*
- generically but very broadly and unclearly (e.g., *"services for youth during their transition to adulthood,"* which begs questions about which *"youth,"* what services, what transition means, and transition from what?)
- by specifying services or programs that are provided or funded under specified legislation (e.g., the *Adoption Act*, *Youth Justice Act*, etc.)
- by a combination of a generic description together with identification of the legislative authority (e.g. both "child care" generically and then specifying both the *Child Care BC Act* and the *Child Care Subsidy Act)*
- by specifying a program name (e.g., the child in the home of a relative program).

The different ways that designated and reviewable services are described in the Act is problematic because it leads to a lack of clarity about the scope of services that are within the Representative's mandate and leads to the exclusion of relevant and important services for vulnerable children.

Services to children and youth with special needs[56] is an example in point. These services, unlike some other services such as mental health and addiction services for children, are not described generically.

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[55] United Nations Committee on the Rights of the Child. *General Comment No.2.* Thirty second Session, January 2003, p.2.

[56] MCFD now describes "children and youth with special needs" as "children and youth with support needs". Other descriptions include "children with disabilities" or, instead of describing the children, "disability services for children". The Representative continues to use the term "children and youth with special needs" because it is used in the *RCY Regulation*, is well understood in the community and service sectors, and has been used in previous reviews and reports by the Committee.

When the Act was passed in 2006, the responsibility for many (but certainly not all) services to children and youth with special needs was shared between MCFD and CLBC. This explains the reference in the definition of *"designated services"* to services or programs under the *CFCS Act* (e.g., special needs agreements) and the *Community Living Authority Act,* which incorporated those special needs services under the Representative's individual advocacy and monitoring mandates. Nonetheless, several key services for children and youth with special needs that were then administered by MCFD were not mandated under the *CFCS Act* – such as Medical Benefits, Nursing Support Services and Provincial Deaf and Hard of Hearing Services. This called into question the Representative's jurisdiction over those particular services. Further, the special needs services that had been administered by CLBC were transferred to MCFD in 2008, creating more uncertainty about the Representative's legal mandate over these services. These uncertainties were resolved, in part, by way of an amendment to the *RCY Regulation* in July 2019, clarifying the Representative's jurisdiction by prescribing services and programs for children and youth with special needs administered by the minister responsible for the *CFCS Act* (i.e., MCFD).

The amendment to the *RCY Regulation* did not, however, fully address the relevant recommendation arising from the Committee's 2017 statutory review, which stated:

> *The Act's definition of designated services be amended to include services or programs provided or funded by government for children with special needs.* (emphasis added)

Many key services for children and youth with special needs are, to this day, omitted from the Representative's jurisdiction. In 2013, Nursing Support Services were transferred from MCFD to the Ministry of Health and the Provincial Health Services Authority, thereby removing those services from her jurisdiction. Throughout the entire life of the Act, key services for children and youth with special needs administered by the Ministry of Health and health authorities have been omitted from the Representative's individual advocacy and monitoring (or systemic advocacy) jurisdiction, including assessment and diagnostic clinics for children with autism (BCAAN) and complex developmental behavioural disorders (CDBC) and specialized services such as those found at Sunnyhill and Queen Alexandra hospitals. As well, special education services funded through the Ministry of Education and administered by school districts or independent schools are omitted, not just in relation to children and youth with special needs but all vulnerable children, which is a matter discussed in more detail below.

As this discussion illustrates, the responsibility for programs and services sometimes can shift between ministries or public bodies and even between statutory legislative authorities, leading to gaps and uncertainties. The needs of children and youth with extra support needs cannot and should not be described and limited by the silos of ministry mandates and legislation. This concern was reflected in the 2017 statutory review report, in which the Committee commented:

> *Committee Members identified an opportunity to simplify the Act's existing approach to defining services that are within the Representative's mandate. As part of the statutory review, the Committee noted two specific issues where program delivery changes led to inadvertent "gaps" in the Representative's authority to provide advocacy services. A simplified approach to defining services under the Representative's mandate might help reduce the possibility of inadvertent gaps in authority in the future. (p.6)*

The Representative concurs. In her view, a better approach would be to describe all of the services that are to be included in relation to vulnerable children and youth in a clear, generic manner – as is currently the case, for example, with *"mental health services for children"* or *"addiction services for children"* – and then give legislative authority and responsibility to the Representative to negotiate formal agreements with ministries and public bodies as to which specific programs and services are in scope. To illustrate with our example of children and youth with special needs, it is notable the Committee's 2017 statutory review recommended a generic description: *"services and programs provided or funded by government for children with special needs"*. If these services were simply and generically described in the Act, as recommended, the Representative could then follow up with MCFD, the Ministry of Health and the Ministry of Education[57] to identify the particular services that should be in scope.

It is recognized that such an approach runs some risk of uncertainty and, potentially, disagreement between the Representative and ministries about what services should or should not be included. For example, *"mental health services for children,"* on the face of it, unequivocally includes programs such as Child and Youth Mental Health Services administered by MCFD and dedicated Adolescent Psychiatric Units (APUs) administered by health authorities. But does it also include a brief one-time visit to a hospital emergency room? Or a visit to a family physician, funded under the Medical Services Plan, who prescribes an anti-depressant? (The Representative thinks not, to both). Or, a 17-year-old who is admitted to an adult psychiatric unit due to the unavailability of a specialized adolescent unit? (The Representative thinks yes.) These are matters that can be discussed and decided administratively. If there is a disagreement about, depending on perspective, perceived "over-reach" by the Representative or "bureaucratic resistance" by ministries, these disagreements could be resolved by way of referral to the Committee itself, which would provide for a public, transparent and non-partisan process of decision-making.

Turning to a broader issue about scope of services, if the principal purpose and focus of the Representative's mandate is and should be to help better support and improve outcomes for children and youth with extra support needs, it seems anomalous that a universal publicly funded service that, next to the family, is so central to child development is omitted from her jurisdiction (i.e., educational services.[58]) The Representative has produced several public reports that have documented the need for systemic reforms to public education services for sub-populations of children with extra support needs, in particular, children in care,[59] children and youth with special needs, and youth justice.[60] No doubt, the same could be found for children and youth involved in the mental health and addictions systems who are also often concurrently involved in multiple systems of services. Further, the impacts of the pandemic have left no doubt about the importance of schools to the well-being of children, and their families,

[57] Note that while the responsibility for child care services is being transferred from MCFD to the Ministry of Education in 2022, the responsibility for Supported Child Development services for children with special needs will remain with MCFD. Nonetheless, the Ministry of Education would need to be engaged in relation to children with special needs if there is agreement to include special education services as a designated service.

[58] Note that this does not just refer to public schools; independent schools are also, in part, publicly funded.

[59] See: *Health and Well-Being of Children in Care in B.C.: Educational Experience and Outcomes (2007); Room for Improvement: Toward better educational outcomes for children in care (2017); A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood (2020),* and *Kids, Crime and Care, Health and Well Being of Children in Care: Youth Justice Experiences and Outcomes (2009)*

[60] See: *Alone and Afraid: Lessons learned from the ordeal of a child with special needs and his family (2018); Left Out: Children and youth with special needs in the pandemic (2020);* and *Excluded: Increased Understanding, Support and Inclusion for Children with FASD and their Families (2021)*

especially for children with special needs.[61] Yet, the Representative has not been given – and children and families have not been able to benefit from – a mandate to provide individual advocacy for children in receipt of or eligible for "special education" (or "inclusion") services, nor a direct monitoring (systemic advocacy) mandate over those same special educational services. A "whole child" approach demands the inclusion of these crucially important services. If a decision is made to include special education services within the Representative's purview, it is safe to say that this could have an appreciable resource impact on the operations of the Office.

Another emerging area of prospective jurisdiction that could be considered by the Committee is services to gender diverse (transgender and non-binary) children and youth. This is a small but high-needs population of children who the Representative frequently encounters in critical injury and death reports and in advocacy cases but only, due to jurisdictional limitations, to the extent that some of these children and youth are involved with reviewable or designated services. This population experiences stigma, discrimination, marginalization, violence and trauma that lead to concerningly higher rates of, for example, mental health issues such as suicide attempts and ideation, and of substance use. The Representative has commissioned a research review by the University of British Columbia's Stigma and Resilience Among Vulnerable Youth Centre (SARAVYC) that should be available in fall 2022 and will be addressing the matter of prospective jurisdiction in more detail at that time.

The discussion above relates to "designated" services for children and youth and the Representative's individual advocacy and monitoring (systemic advocacy) mandates. Otherwise, the Representative is satisfied that the current narrower jurisdiction in relation to "reviewable services" for the purpose of reviews and investigations of critical injuries and deaths – limited to child welfare, youth justice, mental health and addiction services[62] – is sufficient, for now. In this regard, it is noted that even 15 years after the implementation of the statutory duty to report critical injuries and deaths to the Representative that is set out in s. 11, health authorities are only now in the beginning stages of reporting these serious circumstances in relation to mental health and addictions services for children and youth that are provided or funded by the health authorities. It would be prudent to await a fulsome reporting by the health authorities under the current mandate before considering next steps, if any, in this regard.

In relation to defining the Representative's individual advocacy and monitoring (systemic advocacy) jurisdiction respecting children and youth, the Representative recommends:

- **The Committee give consideration to expanding the individual advocacy and monitoring (systemic advocacy) mandates of the Representative in relation to children and youth to include all publicly funded services for all children and youth, linking this expanded jurisdiction to an additional purpose of the education, promotion and monitoring of the rights of children and youth.**

[61] See: *Left Out: Children and youth with special needs in the pandemic (2020)*

[62] Under the *RCY Regulation*, reviewable services also include children who are in receipt of funding under the child in the home of a relative program. The Representative does not, however, receive reports of critical injuries and deaths about this population of children because, being financial agreements, there are no (case management) means for MCFD to monitor and report the same.

- **If a decision is made to retain the Representative's jurisdiction to a more limited focus on publicly funded services to children and youth with extra support needs, the Committee give consideration to clarifying the scope of services and children and youth served by describing services generically, including:**
    - **a) early childhood development services**
    - **b) child welfare services**
    - **c) mental health services for children and youth**
    - **d) addiction services for children and youth**
    - **e) services for children and youth with special needs**
    - **f) special education (or inclusion) services for children and youth**
    - **g) youth justice services**
    - **h) services for youth in their transition to adulthood; and**

    give the authority and responsibility to the Representative to develop agreements with ministries and public bodies as to which particular services and programs are to be included and, in the event of disagreement, the authority to refer the matter to the Committee itself for resolution.
- **The Committee give consideration to including services to gender minority children and youth in the above-noted list**
- **At minimum, the Representative's current mandate in relation to children and youth with special needs be expanded to include directly relevant services administered by health authorities.**

For clarity, special education services[63] are included in above-noted list of services as these services are directed to children with extra support needs whereas child care is intentionally omitted because these are generally available services that are not specifically targeted to vulnerable children. An exception in relation to child care services is Supported Child Development services, the responsibility for which will remain with MCFD and which can be captured under the rubric of services for children and youth with special needs.

Services for Young Adults

From the outset, the definition of "designated services" for the purposes of the Representative's individual advocacy and monitoring mandates included *"services for youth and young adults during their transition to adulthood."* While "youth" is defined in the Act, "young adult" was not defined in the original iteration of the Act. Moreover, the overly general description of *"transition to adulthood"* created uncertainties about transition of who, from what, and how?

[63] The issue of the Representative's jurisdiction over special education is not new. It is noted that for the 2012 statutory review the Representative requested jurisdiction over educational services but limited only to children in care, while in the 2017 statutory review the Representative requested monitoring (but not individual advocacy) jurisdiction over special education

The Representative's mandate in relation to services to young adults was subsequently clarified, to a limited extent, in three stages.

In 2013, the Act was amended,[64] defining "young adult" in s. 6(2) as a person who is:

a) 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.

At that time, the age of under 24 years aligned with the eligibility of young adults for Agreements with Young Adults (AYA) set out under the *CFCS Regulation,* but that same regulation was later (2016) amended and increased to be under the age of 27 years, thereby creating a discrepancy.

The 2013 amendments to the *RCY Act* also added sub-section 6 (a.1) to the Act, thereby according the Representative individual advocacy (but not monitoring) jurisdiction over young adults under 24-years-old but this new jurisdiction was limited by virtue of s. 4.1 of the *RCY Regulation* to Community Living BC services only.

The Committee's 2017 statutory review recommended three key changes in respect of the Representative's individual advocacy mandate for young adults:

> *The Act be amended to allow the Representative for Children and Youth to support, assist, inform and advise young adults who have previously been in care with respect to services and programs necessary to support them in their transition to adulthood.*
>
> *The Act be amended to ensure the Representative has authority to provide advocacy services with respect to programs and services for young adults with special needs that were formerly delivered under the Community Living Authority Act. Further, amendments to the Act should ensure that the Representative's existing mandate with respect to young adults with special needs is expanded in conjunction with the recommendations related to young adults who have previously been in care.*
>
> *The Act be amended to a define a young adult as a person aged 19 years of age but under age 26,[65] to align with the eligibility for agreements with adults under section 12.3 of the Child, Family and Community Service Act, and remove the requirement that a young adult is required to have received a reviewable service within the 15 months before the individual's 19th birthday.*

An amendment to s. 4.1 of the *RCY Regulation* in July 2019 partially addressed the first of the Committee's recommendations above by according the Representative individual advocacy jurisdiction for young adults who are eligible for an Agreement with Young Adults under s. 12.3 of the *CFCS Act* and those eligible for the Provincial Tuition Waiver Program, currently administered by the Ministry of Advanced Education and Skills Development.

Amendments to the *RCY Act* that were passed in October 2021 addressed the third of the Committee's recommendations by re-describing young adults as *"included adults,"* and increasing the age range from under 24 to under 27 years of age (to align with AYA eligibility), The amendments also removed the requirement for a young adult to have received a reviewable service within 15 months of the person's

[64] *Supra,* note 8

[65] The reference to *"under age 26"* was obviously in error as AYA eligibility is actually under age 27.

19th birthday.[66] These amendments were brought into force on Feb. 28, 2022.[67] (For ease of reference, "included adults" will continue to be described in this submission as "young adults".)

In summary, the Representative now has individual advocacy jurisdiction in relation to young adults under the age of 27 years who were formerly youth in care and eligible for an AYA or tuition waiver, or those eligible for or in receipt of CLBC services. The scope of the Representative's individual advocacy mandate, however, is statutorily limited to those specifically identified program services (i.e., AYA, tuition waiver and CLBC services). Such a narrow scope does not nearly satisfy the Committee's unanimous 2017 recommendation that the Representative be accorded the authority to advocate:

> … *with respect to services and programs necessary to support them in their transition to adulthood.* (emphasis added)

The Committee also stated that:

> … *the categories of services should be carefully defined so that the Representative's mandate does not inadvertently exclude young adults who would benefit from support in accessing services they need for a successful transition into adulthood.*[68]

As with children, if the goal of individual advocacy is to improve services to and outcomes for young adults with extra support needs, then a "whole person" approach demands that, at the least, the core services "necessary" to support them in their transition to adulthood be able to be addressed. These could include, for example, services such as mental health and addiction services, housing supports and financial supports or, in the case of CLBC young adults who have concurrent significant medical needs, specialized health services and supports.

The Representative has now had several years experience with advocacy for young adults involved in the CLBC service system and can state there have been many case examples where advocates have not been able to address the services necessary to support them in their transition to adulthood. The case of Jason is just one example in point (see text box).

JASON'S STORY

Jason is a CLBC-eligible young person who was hospitalized for lengthy periods three times between the ages of 18 and 21. His first hospitalization in an adult psychiatric ward took place while he was still 18 and eligible for MCFD services, but he remained in hospital without supports for months. He was discharged by the hospital to his parents' care without supports. It did not last. His discharge from his second mental health hospitalization, when he had become an adult, did involve some planned post-discharge services, but they were not provided in a timely nor effective way. Again, transition to the community was unsuccessful. At the current time, at the age of nearly 21, he remains in hospital for the third time. There has been an effort to coordinate services between CLBC and the health authority, however, the RCY advocate does not have jurisdiction to advocate for timely and appropriate support services from the health authority.

[66] *Supra*, note 8.
[67] Order-in-Council 111/2022
[68] *Supra*, note 17, p.10

Similarly, the poor outcomes and the broad range of needs of young adults who were formerly in care has been documented in detail by the Representative in her 2020 report, *A Parent's Duty*: *Government's Obligation to Youth Transitioning into Adulthood.* This report made a compelling case for systemic reform to fully address the broad swath of needs of this highly vulnerable population, including income support, education and training, mental health and addiction services, mentoring and housing. This report noted:

> *Research – including hard science on brain development – along with the experiences of parents and youth everywhere underlines that the journey to self-sufficiency takes time and much support, well into a person's twenties. We need systems of support for youth in care that look much more like the diverse, long-lasting and highly individual supports that a parent provides as their own children grow into adulthood. (p.4)*

As well, the 2020 report, *From Marginalized to Magnified: Youth Homelessness Solutions From Those With Lived Expertise,* featured the voices of young adults with lived expertise and their needs for a broad suite of support services.

Government has clearly acknowledged and responded to the needs of young adults who were formerly in care through welcome new initiatives arising from the most recent provincial Budget, which include a new financial supplement, a no-limit earnings exemption, financial assistance with the costs of housing, the support of dedicated transition workers, enhanced life-skills and mental health programs, better medical benefits, and making permanent former emergency measures that allow young people to stay in their placements past their 19th birthday.[69] Yet, despite these well-documented needs, which have obviously been recognized by government, the Representative's individual advocacy jurisdiction in relation to these young people is mis-aligned by being limited to just AYAs and tuition waivers.

It should be noted as well that AYA eligibility does not, as the Committee recommended in 2017, currently include young adults who have been "previously in care," which would include a person has been previously in care at any time. AYA eligibility is limited by s. 8.3 of *the CFCS Regulation* to young people who were in continuing custody, on a Youth Agreement, or in the guardianship of a Director of adoption or of a Director under s. 51 of the *Infants Act* when they "aged out" at 19. This excludes other young people in care, such as those who were on voluntary care agreements, special needs agreements, or in temporary care.[70] Importantly, it also excludes young people who may have previously spent substantive periods of time in care or under an agreement but who may not have been in care when they turned 19. Examples are a young person with significant mental health or addiction issues who dropped out of or was terminated from a Youth Agreement before the age of 19, or a youth who spent many years in care but was adopted before the age of 19.

On the other hand, including every young person who has spent any amount of time in care at any previous time would involve a much larger number of eligible persons and, for some, might be considered to be over-inclusive (e.g., a child who was briefly in care for a few weeks at a very young age, and was returned to her parents with no subsequent involvement).

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[69] Government of British Columbia News Release, "$633 million to help prevent and reduce homelessness". March 17, 2022

[70] In light of the new program initiatives identified earlier, it seems likely that there will have to be amendments to the current provisions governing AYA eligibility.

Another approach is reflected in the eligibility that (the same) government has established for the Provincial Tuition Waiver Program which, more in keeping with the Committee's 2017 recommendation, includes young people who were formerly care under any legal status for at least a consecutive or cumulative total of 24 months.[71] While broader and much less exclusive than an "aged out" definition, there are still limitations to this approach as some needy individuals may nonetheless be excluded, such as a youth who was in care for less than two years but nonetheless experienced a considerable degree of trauma during that time.

It would be helpful if the Committee directly addressed this question of definition and eligibility for young adults who were formerly in care or under an agreement (i.e., determining whether it should be inclusive of all young people who were formerly in care or under any type of agreement under the *CFCS Act* at any previous time, or an "aged out" approach, or a middle option such as the two-year eligibility criteria for tuition waiver). The Representative supports the broadest possible definition, noting that the benefits of including all young people in genuine need and not excluding some by establishing arbitrary criteria outweighs other considerations.

Turning to another matter, for children and youth, the Representative's individual advocacy and monitoring (or systemic advocacy) functions go hand in hand (i.e., under s. 6, the Representative has jurisdiction to provide individual advocacy services for children in receipt of or eligible for the wide range of designated services, and also to monitor, review, audit and conduct research in relation to the very same range of services). The connection between the two is obvious: individual advocacy facilitates improvements to services to individual children and their families, while the forward-looking function of systemic advocacy promotes improvements to those same systems that serve all eligible children and families. Moreover, examining and analyzing issues that collectively emerge from advocacy for individual children and families serves to inform the identification of systemic issues that require attention and improvement.

For services to young adults, however, the Representative's jurisdiction is limited to individual advocacy – there is no systemic advocacy (monitoring) function. This issue was addressed in the 2017 statutory review, wherein the Committee recommended:

> *Section 6(1)(b) of the Act be amended to authorize the Representative to monitor, review, audit and conduct research in respect of prescribed services …*[72]

"Prescribed services" refers to services that are prescribed by regulation, specifically services to young adults, including CLBC services, Agreements with Young Adults, and tuition waivers. The Committee said this about the issue:

> *With regard to the proposed additions and clarifications to the scope of the Representative's authority under section 6(1)(b), Committee Members agreed that it would be a modest change to clarify that prescribed services may be subject to the Representative's monitoring authority under section 6(1)(b).* (p.13)

[71] Ministry of Advanced Education and Skills Development, Student Aid BC website. Note that eligibility also includes enrolment in the child in home of a relative program.

[72] This recommendation concludes with the words: *"… and reviews by the director under the* Child, Family and Community Service Act.*"* This second part of the recommendation will be discussed later.

Despite the view that giving the Representative monitoring (systemic advocacy) jurisdiction over young adult services would represent only a modest change, government has not actioned the Committee's recommendation in the more than four years since it was made. As such, the Representative has, in effect, an incomplete advocacy role in relation to these important services for vulnerable young adults. This unfortunate gap is also inconsistent with government's very clear acknowledgement of the significant needs of young adults who were formerly in care by, as discussed earlier, the newly announced significant improvements in services that are promised to be implemented in the coming months and years. Yet, the Representative will not have the authority to monitor the implementation of these welcome improvements and help ensure they best serve young people.

Finally, it was recommended earlier that, at minimum, the *RCY Act* be amended to require the Representative to take into account the *UNCRC* in carrying out her functions in relation to children and youth. The *UNCRC,* of course, does not apply to young adults. The *United Nations Declaration on the Rights of Persons with Disabilities (UNCRPD),* which was adopted by the United Nations General Assembly in 2006 and ratified by Canada in 2010, sets out fundamental principles (e.g., inclusion, autonomy, etc.) and rights that, like the *UNCRC* for children, guide the work of the Representative in relation to advocacy services to young adults who are eligible for CLBC services. Although the Representative is guided by the *UNCRPD,* it would be desirable for the Representative to, as with the *UNCRC*, be statutorily required to take the *UNCRPD* into account in carrying out her functions in relation to young adults who are eligible for CLBC services.

In relation to the jurisdiction respecting young adults, the Representative recommends:

- **The Committee consider amendments to enable the Representative to provide individual advocacy services to young adults in respect of services necessary to support their transition to adulthood, giving the authority and responsibility to the Representative to develop agreements with ministries and public bodies as to which particular services and programs are to be included and, in the event of disagreement, the authority to refer the matter to the Committee itself for resolution.**
- **If a decision is made to maintain the current approach of designating services to young adults by way of regulation, at minimum, the scope of services be expanded to include mental health and addiction services for young adults who were formerly in care or eligible for or in receipt of CLBC services. As well, the Committee should give consideration to the inclusion of housing services for young adults and specialized health services and supports for CLBC young adult adults who have significant medical needs.**
- **In the interest of accessible language, recent amendments changing the wording of "young adult" to "included adult" be changed back to "young adult".**
- **"Young adult" (or "included adult") be defined, at minimum, as adults under the age of 27 years who:**
    - **a) are eligible for or in receipt of Community Living BC services or,**
    - **b) are eligible for the full range of extended placement, housing, financial, transition worker, and life skills and mental health supports set out in the recently announced government initiative to enhance services and supports for young adults who were formerly in care;**

  and the Committee give consideration to defining "young adult" for the purposes of (b) above more broadly as a person who was formerly in care under any legal status or agreement under the *CFCS Act* at any previous time.

- **The Act be amended to give the Representative a systemic advocacy (monitoring) function in relation to services to young adults who were formerly in care and young adults in receipt of or eligible for CLBC services.**
- **The Act be amended to require the Representative to take into account the *United Nations Declaration on the Rights of Persons with Disabilities* in carrying out her functions in relation to young adults who are eligible for CLBC services.**

Reviews and Investigations

One of the Representative's key functions is, under Part 4 of the *RCY Act*, to review, investigate and report publicly on critical injuries and deaths. This provides desirable transparency and accountability respecting services provided to vulnerable children, which can and does lead to improvements in services generally. Put another way, the Representative's investigative and reporting functions can identify errors or gaps but can also point out where things are being done well. However, as discussed below, the significant public interest goal in this function is materially hampered by unnecessary scope limitations and imprecise language.

Before fleshing out these concerns an overview of how Part 4 works is necessary.

Section 1 of the *RCY Act* defines *"critical injury"* as well as the *"reviewable services"* that are subject to such reviews and investigations, while sections 11 to 16 set out the criteria, jurisdiction and process for reviews and investigations.

The Representative may only review and investigate in respect of a *"critical injury"* or death of a child. A *"critical injury"* is defined as an injury to a child that may *"result in the child's death"* or *"cause serious or long-term impairment of the child's health."* Section 1 defines "*reviewable services"* as:

> *(a) services or programs under the Child, Family and Community Service Act and the Youth Justice Act;*
>
> *(b) mental health services for children;*
>
> *(b.1) addiction services for children;*
>
> *(c) additional designated services that are prescribed under section 29(2)(b).*[73]

The legislation imposes a very clear, positive reporting duty on all public bodies responsible for a reviewable service to provide information to the Representative when the public body becomes aware of a critical injury or death of child who was receiving, or whose family was receiving, a reviewable service at the time of or in the previous year.[74] After receiving such a report, the Representative may[75] conduct a review for the purpose of determining whether to investigate or to identify and analyze recurring circumstances or trends (the latter activities are commonly known as "aggregate" reviews and reports).[76]

[73] *Supra*, note 62.
[74] Section 11.
[75] Although the Representative "may" review a report of a critical injury or death, and therefore has the discretion not to do so, the practice is to at least conduct an "initial review" – or summary review – of every in-mandate report of a critical injury or death.
[76] For a recent example of an aggregate report, see, *A Way to Cope: Exploring Non-Suicidal Self-Injury in B.C. Youth*, September 2020.

If, after completion of a review,[77] the Representative decides not to conduct an investigation, she may disclose the results of the review to the public body responsible for the reviewable services.

After completing a review, the Representative may investigate a critical injury or death where the Representative determines that a reviewable service, or the policies and practices of a public body or director under the *CFCS Act* may have contributed to the critical injury or death, and the critical injury or death:

- *was or may have been due to one of the grounds for child protection set out in section 13 of Child Family and Community Service Act,*
- *occurred, in the opinion of the Representative, in unusual or suspicious circumstances, or*
- *was or may have been self-inflicted or inflicted by another person.*[78]

The Representative's authority to investigate is, however, subordinated to other processes. The Representative is prohibited from investigating until:

- *if applicable, the completion of a criminal investigation and criminal court proceedings,*
- *in the case of a death, the earlier of the date on which a coroner meets certain requirements under the Coroners Act and one year after the death; and*
- *where a public body or director responsible for a reviewable service has procedures in place for investigation of critical injuries and deaths, the earliest of the date of completion of the investigation by the public body or director, or one year after the* date *of the critical injury or death, or the date the public body or director provides the Representative with written consent to investigate.*[79]

Section 16 sets out requirements for the Representative's review and investigation reports. As mentioned earlier, under s. 16, the Representative is authorized to aggregate and analyze information received from reviews and investigations and produce a report of that information. These reports must not contain information in individually identifiable form. Where the Representative has investigated the critical injury or death of a child, the Representative must make a report about it.

Both types of report, aggregate and individual, must be provided to the Committee and to the public body or the director responsible for the provision of a reviewable service. For individual investigations, the report must contain the Representative's reasons for undertaking the investigation and may include recommendations to the public body or director responsible for the provision of a reviewable service that is a subject of the report. The report may also make recommendations to any other public body, director or person that the Representative considers appropriate. The Representative may disclose personal information in a public report of an individual investigation if specified public interest grounds are satisfied.[80]

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[77] Administratively, the Representative conducts two types of reviews: all in-mandate reports are subject to an initial (or summary) review, a small number of which are selected for comprehensive reviews. A comprehensive review involves an in-depth file review. In practice, a matter only proceeds to investigation after a comprehensive review is completed and which indicates an investigation is merited. Most comprehensive reviews do not proceed to investigation, although the findings of comprehensive reviews are shared with the public body or bodies responsible for services (but, as discussed later, not the public, parents or significant others).

[78] Section 12, which also enables the Committee to refer a critical injury or death to the Representative for investigation.

[79] Section 13.

[80] As discussed below, there is an apparent gap in the Representative's reporting function that should be filled – where the Representative conducts an aggregate review, not individual investigation, it appears that the aggregate review report cannot include recommendations to the responsible public body or director.

With this overview in mind, the Representative urges the Committee to consider the following concerns.

First, in order for her to properly discharge her statutory functions to review and investigate critical injuries and deaths, the Representative must be informed by the responsible public body that the critical injury or death occurred in the first place. That is why s. 11 creates a clear, positive legal duty for public bodies responsible for reviewable services to report these events to the Representative. Compliance by public bodies with this legal duty has not, however, been without issue. The lack of compliance by MCFD with the legal duty to report prompted a Representative's special report in 2010.[81] This concern was eventually satisfactorily resolved in 2015 by MCFD developing and implementing a reporting policy and process that has resulted in, as noted earlier, a vast increase in reports since then. While the Representative, through the individual case review of reported injuries and deaths, still routinely finds previous critical injuries that have not been reported by MCFD, to its credit, that ministry has dedicated considerable effort to improving reporting.

This issue has, however, re-emerged more recently in relation to efforts to have health authorities begin to comply with their unambiguous legal duty to report critical injuries and deaths associated with the delivery of mental health and addictions services to children. Health authorities have raised questions over the years about what constitutes a "critical injury". A prominent area of discussion has been what is meant by the term "health" in the s. 1 definition: *"an injury to a child that may … cause serious or long-term impairment of the child's health".*

It is well-established both legally and in practical terms that a person's "health" is about much more than physical health. It clearly includes mental and emotional health.[82] Given the public policy goals of the legislation, it is inconceivable that the Legislature intended to exclude mental health from the term "health" in the *RCY Act*. Indeed, the legislation itself underscores that the Legislature intended no such thing, since the definitions of "designated services" and "reviewable services" include "mental health services for children".

This issue is compounded, for some, by the use of the word "injury," which in common discourse connotes physical injury. "Serious harm" may be more clearly understood words.

Accordingly, matters that do not involve physical injury but nonetheless seriously impact a child's emotional and psychological well-being are clearly encompassed within the meaning of "critical injury". These include incidents such as sexual touching or sexual interference, the death of a parent or loved one, and witnessing traumatic events. It is also important to note that "critical injury" is defined as an injury that "may" cause serious or "long-term" impairment of a child's (mental or emotional) health. In this regard, it is also well established that the impacts on children (and adults) of disturbing and traumatic events may not be immediately apparent and often do not fully materialize until well after the trauma has occurred, causing long-term impairment. These are settled issues that should not be questioned or prompt debate, but nonetheless are too often questioned.

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[81] *Special report: Reporting of the Critical Injuries and Deaths to the Representative for Children and Youth*, 2010 Section *20 RCY Act* enables the Representative to make a *"special report"* to the Legislative Assembly *"if the representative considers it necessary to do so."*

[82] The common-sense observation that "health" goes beyond "physical" health is amply supported by, for example, sources such as the World Health Organization, whose website underscores that: "health" is "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".* As another example, court decisions have for well more than a century made it clear that damages for "personal injury" go beyond physical harm because "injury" can be psychological, mental or emotional.

Despite the clear scope of what "health" means, the definition of critical injury in s. 1 of the Act should be amended to explicitly state that "health" includes mental and emotional health. Consideration could also be given to using "serious harm" instead of "critical injury".

A second issue concerns s. 11, which sets the boundaries for what are reviewable services by requiring that the child or the child's family "was receiving" a reviewable service at the time of, or in the year previous to, the death or critical injury. This could be interpreted as ruling out circumstances where a child applied for or was referred to a reviewable service but was placed on a waiting list (i.e., cases where the child was not yet "receiving" services at the time of the death or critical injury). This is especially important in the context of mental health and addiction services, both of which are reviewable services and both of which, unfortunately, are under-resourced and commonly have wait lists.

Simply put, there should be no doubt that the Representative has jurisdiction to review and investigate cases such as where a child commits suicide while awaiting mental health clinical services or a youth overdoses while awaiting placement in a detox or addictions treatment program. This change would properly align the Representative's review and investigation jurisdiction with the Representative's advocacy mandate, which includes, as stated in s. 6(1)(a), advocating on behalf of a child *"receiving or eligible to receive"* a designated service. The same standard should apply to critical injuries and deaths.[83]

The third issue relates to clarifying the Representative's authority to make recommendations to public bodies when the Representative conducts an aggregated analysis and report on reviews or investigations of deaths or critical injuries. As noted earlier, s. 16(1) authorizes the Representative to aggregate and analyze information received from reviews and investigations and produce a public report. Related to this, the authority to conduct aggregate reviews is set out in s. 11(3)(b), which states that the Representative may conduct a review:

> … *to identify and analyze recurring circumstances or trends*
>
> *(i) to improve the effectiveness and responsiveness of a reviewable service, or*
>
> *(ii) to inform improvements to broader public policy initiatives.*

Sections 16(3) and (4) authorize the Representative to, in an investigation report about a critical injury or death of a child, make recommendations to the public body or director responsible for a reviewable service that is a subject of the report. By contrast, however, the s. 16 authority to prepare an aggregate report of reviews and investigations does not unambiguously, expressly enable the Representative to make recommendations.

Since the purpose of an aggregate review is to improve the effectiveness and responsiveness of reviewable services, or to inform improvements to broader public policy initiatives, the authority for the Representative to make recommendations to public bodies appears to be implicit and, standing alone,

[83] Questions could be raised about how a public body would be able to report a death or critical injury to the Representative if the child was not actually in receipt of services at the time. In some circumstances, the public body may become aware (e.g., on follow up with a no-show for an appointment or placement). Otherwise, these matters can come to the Representative's attention through a coroner, from parents or significant others, or the media. The same issue arises in relation to a public body reporting a critical injury or death of a child who is no longer in receipt of services but had received services in the previous year. The public body is only required to report when the public body *"becomes aware"* of the critical injury or death.

would likely not be at issue. Some uncertainly arises, however, because aggregate reports do not stand alone and in every other context the Representative is given explicit authority to make recommendations:

- section 6(10(b) expressly provides that the Representative may *"monitor, review, audit and conduct research … for the purpose of making recommendations ..."*
- section 16(4)(a) states that an investigation report may *"contain recommendations"* to public bodies, a director or person that the Representative considers appropriate
- section 20 provides that the Representative may make a special report to the Legislative Assembly, which may *"contain … recommendations"* for a public body or director.

In the face of these explicit references to making recommendations in every other situation, the silence about recommendations in reports on aggregate reviews and investigations creates some uncertainty that should be clarified. To avoid doubt, and to more clearly support the *RCY Act's* public policy goals, s. 16(4) should be amended to explicitly authorize the Representative to make recommendations in either type of aggregate report.

The final issue relates to a matter that was addressed by the Committee in the 2017 statutory review and resulted in this recommendation:

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

This Committee recommendations was prompted by the then-Representative's request and it has not been actioned by government in the more than four years since it was made. In discussing this issue, the Committee stated:

> *The Ministry of Attorney General's written submission asked whether the Act should be clarified such that events that occurred after a person's 19th birthday are not within in the Representative's investigation and reporting scope. The Representative did not agree with the Ministry's suggestion, and recommended that the Act should instead be amended to establish that when the Representative has commenced an investigation into a critical injury of a child, the Representative has authority to include events (such as further critical injuries, or death) that occur after the person who is subject of the investigation has turned 19.*
>
> *Committee Members concluded that Office of the Representative for Children and Youth's proposal would not expand the Office's scope to investigate critical injuries and deaths of young adults in a broad way. Instead, the intent is to allow the Representative discretion to include events that the Representative feels are relevant to a critical injury investigation as long as the initial investigation began while the person was under the age of 19.(page 15)*

Setting aside the fact that this recommendation has languished inside government, upon reflection, it would have been too narrow in any case. This is because the recommendation would only permit an investigation to *"include events and incidents that occurred after the child reached 19 years of age"* where the Representative has already been investigating a critical injury to or death of a child before that person turned 19. The chances that the Representative will have already commenced an investigation into a critical injury before a death or another critical injury subsequently occurs are very slim, especially considering the statutorily required time delay in s. 13, described earlier, must be satisfied.

In the Representative's view, the central issue is that, when there have been critical injuries before the age of 19 – such that jurisdiction is established – an investigation should be able to examine all matters and incidents that are reasonably connected to the critical injuries, even if some of those incidents, including death, happened after the young person attained the age of majority. Simply put, the Representative should have the authority to fully investigate all matters in a case where, for example, a young person experienced several overdoses while under the age of 19 and then died of an overdose six months after their 19th birthday. For the Representative to have to truncate such an investigation at age 19, and not be able to tell the whole story, dishonours that child, and the child's family, and compromises the central purposes of an investigation set out in s. 11 (i.e., to improve the effectiveness and responsiveness of reviewable services or to inform improvements to broader public policy initiatives).

Alysha's story (see textbox), which has been anonymized with some details changed or omitted to make it non-identifiable, is an example of a tragic case that clearly warranted investigation but was unable to proceed to investigation due to these age-related jurisdictional constraints.

ALYSHA'S STORY

Alysha's was a First Nations girl who came from a family with a history of intergenerational trauma and child protection involvement. She was removed from her family and community at birth and later adopted by a non-Indigenous family who unfortunately did not support her in maintaining connections with her First Nation through her formative years, although she did re-connect with her First Nation later in adolescence.

Alysha began to show early symptoms of mental health problems and poor adjustment to school and family in her pre-adolescent years. These problems escalated through her teen years with self-harm and suicide attempts, disordered eating, polysubstance use, school dropout, and behavioural issues such that her adoptive family was not able to support her. She was diagnosed with FASD and accompanying cognitive impairments, depression and anxiety, and substance use disorder.

She experienced several critical injuries throughout her adolescence, including self-injury and suicide attempts, overdoses, and a serious illness that may have caused brain damage.

In later adolescence, florid psychotic symptoms emerged, resulting in her being involuntary detained under the *Mental Health Act*. She was placed under an Interim Custody Order under the *CFCS Act*. She was initially detained in an adolescent psychiatric unit but, after reaching 19 years of age, was transferred to an adult psychiatric hospital. In the several months that she was in both the adolescent and adult hospitals, she was frequently restrained and placed in seclusion, including for consecutive periods involving several weeks.

Securing an appropriate placement on discharge from hospital proved to be elusive. An assessment found that she was not eligible for CLBC services. She was not eligible for an Agreement with Young Adults under the *CFCS Act* because she was not in continuing care or on a Youth Agreement when she turned 19. Supportive housing options were unavailable. Although she was considered highly vulnerable, she was discharged to a shelter. She died from toxic drug poisoning, five months after turning 19-years-old and shortly after being discharged from hospital.

Although Alysha was in receipt of more than one reviewable service, had experienced a number of critical injuries and her challenges of mental health, substance use and housing continued from adolescence into her first year as an adult, the Representative was unable to investigate this case through to her death due to the age jurisdiction limitations set out in the *RCY Act*. This is a case that otherwise would have been investigated due to the opportunities for learning about systemic and structural barriers to quality services for young people with complex needs.

The Representative accepts that, if investigations could explore subsequent matters that occur in early adult years, there must be reasonable limitations on this proposed jurisdiction. We note, as an example, that the Alberta Child and Youth Advocate has jurisdiction to review the deaths of all persons who previously received intervention services within two years before the age of majority and those who die within two years after attaining the age of majority.[84] Acknowledging Alberta's two-year window, the Representative believes that a period of one year after the age of majority would be appropriate (noting that this would complement the fact that under s. 11 of the *RCY Act* critical injuries and deaths that occur within the previous year of receipt of reviewable services are within jurisdiction for potential investigation).

In relation to reviews and investigations, the Representative recommends:

- **The definition of critical injury in section 1 of the Act be amended to underscore that "health" as used in the Act includes mental and emotional health. Further, consideration be given to replacing "critical injury" with "serious harm".**
- **Section 11 of the Act be amended to clarify that a critical injury or death that occurs in relation to a child who is eligible for a reviewable service – such as being on a waiting list for service – is subject to review and investigation.**
- **Section 11 of the Act be amended to clarify that the Representative may make recommendations to a public body or director in an aggregate review report on deaths or critical injuries.**
- **The Act be amended to provide that, where a critical injury has arisen while the injured person was a child, an investigation may include events and incidents that occurred at least one year after the child reached 19 years of age, where the Representative believes that such an investigation raises important public policy issues.**

Information-Gathering and Disclosure

There are several matters related to information-gathering and disclosure, most of which are also connected to reviews and investigations, that require the Committee's attention.

To enable her to carry out her unique functions, the Act accords the Representative extraordinary powers to gather information. These powers are in turn balanced by extraordinary limitations on the disclosure of that information. These provisions are complicated, and their essential elements are summarized in brief below.

With respect to information-gathering, under s. 10, the Representative has the right to *"any information"* that is in the custody or control of a public body (other than an Officer of the Legislature) or a director that is necessary to enable her to carry out her functions or duties under the Act. This is a wide-ranging authority that includes not just access to case file records but also, for example, medical records, police records and even Cabinet records.[85] The only exceptions are records involving solicitor-client privilege and records relating to a committee of a hospital charged with studying, investigating or evaluating medical or hospital practice.[86]

[84] See s. 9.1(2) of Alberta's *Child and Youth Advocate Act*, noting that this is, in fact, a mandatory duty to review and publicly report.
[85] *Representative for Children and Youth v. British Columbia*, 2010 BCSC 697
[86] Section 51 *Evidence Act* (RSBC 1996) c. 124

As well, s. 11 requires a public body responsible for the provision of a reviewable service that becomes aware of a critical injury or death of a child who was receiving, or whose family was receiving, the reviewable service at the time of, or in the previous year, to provide information respecting that event to the Representative. Further, when the Representative carries out an investigation under s. 12, s. 14 empowers the Representative to make enforceable orders for attendance to answer questions on oath or affirmation and for the production of records.

With respect to information disclosure, the Representative and her staff are required under s. 23 to take an oath of confidentiality and must maintain confidentiality in all matters in relation to the performance of functions or duties under the Act. As well, subsection 23(5) provides that the Representative and her staff cannot be compelled to give evidence in a court or in proceedings of a judicial nature except for the purposes of enforcement of the *RCY Act* itself or to give evidence with respect to a trial of a person for perjury.[87]

The Representative may, however, disclose information, including personal information, on very limited grounds (i.e., only if, in the opinion of the Representative):

a) the disclosure is necessary to confirm the representative is performing, has performed or intends to perform one or more of her functions in respect of an individual, and

b) the public interest in the disclosure outweighs the privacy interests of any individual whose personal information is disclosed.

As examples, these narrow criteria enable the Representative to disclose to relevant staff of a public body that the Representative is engaged in advocacy or an investigation in relation to an identified child, or to publicly state that an investigation will be undertaken. As per subsection 16(5)(b), these same criteria apply to the disclosure of personal information in relation to a public report of an investigation into a critical injury or death.

The issues related to information-gathering and disclosure are discussed below.

When a report of a critical injury or death is received, the Representative conducts a review under s. 11(3) for the purposes of determining whether to conduct an investigation or to carry out an aggregate review of recurring circumstances or trends (e.g., sexual assaults, non-suicidal self-injury). Administratively, the first step is to determine whether the reported circumstances meet the threshold test under the Act vis-a-vis reviewable services and the definition of critical injury under s. 1. If so, an initial case review is conducted and summarized, which may lead to one of several different decisions:

- internal referral for consideration in a future aggregate review
- internal referral for a much more in-depth "comprehensive review" in cases that may be a candidate for a full investigation and public report, or which otherwise appear to identify significant practice or public policy concerns

[87] It is also important to note that, as an Officer of the Legislature, subsection 3(3)(f) of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* exempts from the provisions of *FOIPPA* records created by or for, or that are in the Representative's custody or control, that relate to her functions under the *RCY Act*. (Administrative records such as financial or staffing records are, however, subject to that Act.) Put simply, this means that information and records relating to the Representative's advocacy, monitoring (systemic advocacy) or investigations functions cannot be disclosed or obtained by others under *FOIPPA*.

- external referral to the originating ministry or public body in cases where there are identified practice concerns that require follow up with that individual case by that body
- internal referral to an RCY advocate for follow up in cases where there are identified significant concerns
- no further action, although every case is included in summary statistical analyses of trends and patterns.

The information the Representative receives and reviews is obviously deeply personal and saddening, sometimes tragically so, especially for the parents, other family members and caregivers to the seriously injured or deceased child.

The Representative carries out a fairly small number of full investigations – typically around two per year – because they are very intensive and require a lengthy period and significant staff resources to complete. In those investigations, others involved in the case, including parents, are obviously aware of the action taken by the Representative and of the outcome (i.e., through the investigation process and the public report, which includes recommendations to improve public policies or practices).

Due to the strict limits on confidentiality and disclosure set out in the Act, all other cases of reviews of critical injuries or deaths – almost all of the RCY's cases, in other words – are carried out in complete confidence, with the Representative being unable to disclose to parents (or others) the findings or actions taken. These constraints arise from subsection 11(4) which states:

> *If, after completion of a review under subsection (3), the representative decides not to conduct an investigation under section 12, the representative may disclose the results of the review to the public body, or the director, responsible for the provision of the service that is the subject of the review* (emphasis added).

This means that the results of a review may be disclosed only to the public body or director responsible, with all others, including parents and close family members, being left in the dark about the "results of the review".

We readily acknowledge that this limitation is in keeping with the general purpose of the Act to promote improvements in public policy or practice. However, the inability to disclose any information at all, even generally or in summary, to parents, especially in cases where the child has died, is simply wrong. Imagine a circumstance where your teenage daughter who was caught in the thrall of addiction and well beyond your (or any parent's) capacity to care for, is placed into care and a group home, and then suddenly dies of an overdose. The coroner has decided that there will not be an inquest, as is most often the case. As a parent, you know your daughter's death will, if not fully investigated, at least be reviewed by the Representative. Yet, when you ask the Representative for information, the Representative is legally unable to disclose any information and must tell you that.

The Representative has encountered several cases such as this. These circumstances also can be aggravated in cases where, for example, the child is, or was, in continuing care and the birth or adoptive parent is no longer the legal guardian of the deceased child, leaving the parent legally ineligible to request information directly from the ministry or public body. This occurs even in cases where the birth or adoptive parent, although no longer the legal guardian, has maintained an ongoing and loving relationship with the child. Even then, they are by law completely denied any access to information from any public body.

The Representative appreciates that this is a complex and very challenging issue where there are competing considerations that need to be balanced. The Representative has and needs extraordinary powers to gather information to effectively carry out her functions. There are severe limitations on disclosure precisely because of those extraordinary powers, so the Representative does not become an inadvertent conduit for the disclosure, or discovery, of information that cannot be legally obtained through other means. As well, the Representative's mandate ultimately is to promote improvements to public policy and practice, not to find fault or wrong-doing.

The Representative would not support having a power to disclose to parents the detailed case records gathered for the purpose of a review, or the detailed reports of reviews that are disclosed to public bodies. She does, however, believe that it could be beneficial to have discretion to disclose summary written or oral information to parents about the key findings and decisions made in a review. It is acknowledged that it may be frustrating for parents to be given only summary information, but that is better than no information at all.

It is also recognized that the disclosure of even summary information may open the door to further action by the parent, which perhaps could be mitigated by a prohibition against subsequent disclosure or use of that information in any fashion, including in legal proceedings. The existing s. 23(5), which prevents the Representative and her staff from giving evidence in court proceedings, could possibly be adapted for this purpose.[88]

Another important issue relates to what information may be disclosed to Indigenous Child and Family Service (ICFS) agencies (formerly known as Delegated Aboriginal Agencies), which are delegated legal authority under the *CFCS Act* by the Provincial Director. Some 67.5 per cent of children in care are Indigenous, about 53 per cent of whom are served by ICFS agencies.[89] As noted above, s. 11(4) only permits the Representative to disclose the results of reviews to the "public body" or "director". However, ICFS agencies are not public bodies and are not directors, but rather are delegates of the director. This means that even when an ICFS agency is directly responsible for the conduct of a case that has been comprehensively reviewed, the Representative cannot directly disclose the results of that review to the ICFS agency. The results must go to the director. This unnecessary constraint can be easily remedied by modifying s. 11(4) so that it reads: *"director or delegate of the director"*.

As already noted, the vast majority of reviews by the RCY are conducted in confidence, with the only public reporting being limited to a very small number of public investigation reports, anonymized aggregate reports, and summary statistics (produced, for example, for the Office's annual report). The obvious concern is that the findings and lessons learned from these substantial numbers of confidential reviews are not shared, which is inconsistent with the goals of transparency and accountability. It also means the public bodies and others cannot benefit from the lessons learned by others, which does not promote improvements in services for children, youth or young adults. It is the Representative's view that, in the interest of transparency and accountability, she should be given clear authority to produce publicly available anonymized information about reviews including, where appropriate, the disposition of those reviews and case summaries. In the latter regard, it is noted that MCFD commendably posts anonymized case summaries of director case reviews, albeit brief, on its public website, and the Representative's ability to also do so would be in the public interest.

[88] Other statutes have similar prohibitions. For example, s. 51 of the *Evidence Act* prohibits the use in civil proceedings and other legal proceedings of information or documents related to certain hospital quality assurance processes.

[89] Data is as of Dec. 31, 2021. Source is MCFD Corporate Data Warehouse.

In relation to information-gathering and disclosure, the Representative recommends that the Act be amended to:

- **Give the Representative the discretion to disclose limited summary information of the results of the Representative's reviews of critical injuries and deaths to birth or adoptive parents of a child, regardless of whether that parent has or had guardianship, subject to enumerated criteria and to constraints on the subsequent disclosure or use of that information.**
- **Enable the Representative to directly disclose the results of reviews to delegated Indigenous Child and Family Services agencies.**
- **Authorize the Representative to publicly report anonymized information about reviews of critical injuries and deaths, including the disposition of reviews and case summaries.**

Monitoring Quality Assurance Processes

Ministries and public bodies responsible for the delivery of designated programs for children and families are expected to, and do, have in place a variety of processes and mechanisms to monitor, assess and identify strengths and weaknesses in service delivery, and thereby promote quality improvements. Such quality assurance processes and mechanisms come in a wide variety of forms: formal complaint processes, program evaluations, individual case reviews, policy and standards audits, investigations, establishing and monitoring performance measures, routine and targeted data collection and analysis, and so on.

Section 6(1)(b) of the *RCY Act* describes the Representative's monitoring (systemic advocacy) function *"… to monitor, review, audit and conduct research on the provision of a designated service…"*. A "designated service" is described in s. 1 as an enumerated list of *"services or programs."*

Questions haves been raised about whether the *RCY Act* gives the Representative the authority to monitor quality assurance processes, in particular in relation to monitoring the director's (quality assurance) reviews under s. 93.2 *CFCS Act*. In its 2017 report, the Committee stated that the Ministry of Attorney General:

> *"… also suggested that the Representative does not have authority to review a director's review conducted under the Child, Family and Community Service Act because a director's review is not a service or program for children and their families as set out in the Representative for Children and Youth Act's definition of "designated services."* (p.13)

The then-Representative disagreed with this interpretation, as does the current Representative. It is noted that s. 93.2 of the *CFCS Act* states *"… a director may conduct a review on any matter relating to the provision of a service",* which s. 6 (1)(b) of the *RCY Act* mirrors in stating that the Representative may *"… monitor, review, audit and conduct research on the provision of a designated service".* It is common sense, and consistent with the Legislature's policy intent, to view quality assurance processes as just as integral to the "provision" of a service as other fundamental components of service delivery, such as budget capacity, human resource practices, program policies and procedures, infrastructure supports, information systems, training programs, and so on.

The Committee responded to the Ministry of Attorney General's argument by recommending an amendment to confirm the Representative's perspective:

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

Government has not acted on this recommendation in the more than four years since it was made and it should be dealt with now.

Moreover, although the previous Committee's recommendation related to director's reviews under s. 93.2 of the *CFCS Act*, there is no sound public policy reason why the Representative's authority in this regard should be limited to just *CFCS Act* child welfare services given the scope of the Representative's jurisdiction. There is a very strong case that it should be broadened so that it encompasses quality assurance processes for *all* designated services.

To be clear, the Representative has no interest in, for example, reviewing individual director case reviews or addressing individual complaints. Rather, the Representative should have unambiguous authority to systemically examine the strengths and weaknesses of quality assurance processes that are in put in place by public bodies, and to suggest improvements to those processes. The explicit purpose of the Representative's monitoring mandate is to *"… make recommendations to improve the effectiveness and responsiveness"* of designated services. Quality assurance processes are not immune to weaknesses or insufficient budgetary supports, yet, paradoxically given the Representative's mandate, she is, in the view of some, not allowed to contribute to enhancing the effectiveness and responsiveness of services by reviewing and commenting on public bodies' quality assurance processes intended to improve services.

In relation to the authority to monitor, review, audit and conduct research, the Representative recommends:

- **Section 6(1)(b) *RCY Act* be amended to give clear authority to monitor, review, audit and conduct research in respect of quality assurance processes for all designated services.**

Children and Youth Communicating with the Representative

Section 26 of the *RCY Act* provides that if a child or youth in a foster home, group home, facility or other place in which a designated service is provided asks to communicate with the Representative, the person in charge must immediately forward the request to the Representative and, if the child or youth writes a letter to the Representative, the person in charge must forward the letter unopened to the Representative. The purpose of these provisions is to ensure that a child or youth is free to communicate with the Representative to, for example, seek advocacy assistance, without interference and in privacy. These provisions also recognize that children and youth who are placed in residential arrangements away from family and natural advocates can be in particularly vulnerable circumstances.

Submissions to the 2017 legislation review from First Call and the BCGEU included recommendations that the Act be amended to require care providers and those responsible for facilities to inform children and youth, in language suitable to their understanding, of the role of the Representative, the means to contact the Representative, and to be able to do so privately, and without delay.

In response the Committee said:

> *The Committee considered section 70 of the Child, Family and Community Service Act, which provides that children in care have the right to privacy during discussions with individuals including a lawyer, Member of the Legislative Assembly or Member of Parliament, the Ombudsperson, and the Representative or an employee of the Representative's office, and states that they have a right to be informed about and assisted in contacting the Representative or the Ombudsperson. Members were concerned by an example from one Member's community where a child in care reported having information about the Office of the Representative for Children and Youth removed from the child's possession.*
>
> *The Committee agreed that it is essential for children and youth to be aware of their rights, including the right to contact the Representative.*
>
> *In discussing how children and youth might have their right to assistance from the Representative promoted and protected, Committee Members determined that the Act should not duplicate section 70 of the Child, Family and Community Service Act. However, the Committee urges that children's rights under section 70 must be meaningfully upheld. Committee Members emphasize that social workers and care providers are responsible for meeting the needs of children and youth in care in a way that respects their rights, which includes making children and youth aware of their right to independent advocacy from the Representative.* (p.16)

In short, the Committee did not support the recommended amendment, principally on the grounds that it is apparently unnecessary, as it would duplicate the provisions of the *CFCS Act*.

Section 70(1) of the *CFCS Act* sets out the rights of children in care, including the right *"to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the Representative for Children and Youth Act, the Ombudsperson, a member of the Legislative Assembly or a member of Parliament"*, and *"to be informed about and to be assisted in contacting the representative under the Representative for Children and Youth Act, or the Ombudsperson."*

Section 26 of the *RCY Act* and s. 70 of the *CFCS A*ct, in the Representative's view, remain inadequate to the task of ensuring that children and youth in all residential placement circumstances associated with designated services are made aware of and afforded immediate and private access to the Representative.

First, and most importantly, the s. 70 rights only apply to children and youth in care, yet the Representative's advocacy jurisdiction extends to a much broader range of designated services that provide other types of residential and facility services. These include: mental health detention in hospital under the *Mental Health Act;* addictions residential withdrawal management, treatment and supportive recovery programs; youth justice custody centres and full-time attendance programs; and youth shelters. The s. 70 rights do not apply in these many commonly-encountered situations.

Moreover, even in residential circumstances where s. 70 rights apply, those rights do not require those responsible to explain the role of the Representative to the child or youth in language suitable to their understanding, and to immediacy in facilitating contact with the Representative. As for s. 26 of the *RCY Act*, its nearly anachronistic reference to unopened letters not only ignores the more common means by which children and youth communicate (e.g., social media, chat and text), it does not adequately capture the principle of privacy in all forms of communication.

Further, young adults with special needs who are in CLBC residential placements are similarly situated as children and youth in residential care, and similarly vulnerable. Given this, consideration could be given to extending these requirements to those young adults.

In relation to providing information to children and youth about the Representative and facilitating contact by them, the Representative recommends:

- **Section 26 of the Act be amended to provide that a child or youth in a foster home, staffed residential program, hospital, youth custody centre, facility, or other place where a designated service is provided:**
  - **must be informed about the Representative's role in language suitable to the child or youth's level of understanding**
  - **if requested, the child or youth has a right to be assisted in immediately contacting the Representative**
  - **the child or youth has a right to privacy in all communications with the Representative.**
- **The Committee consider whether these same rights should be extended to young adults who are in receipt of CLBC services.**

Deputy Representative Qualifications

Another matter that was discussed in the Committee's 2017 report related to the qualifications of a Deputy Representative. Section 7 of the *RCY Act* authorizes the Representative to appoint one or more Deputy Representatives. The Ministry of Attorney General's 2017 submission identified an issue with the qualifications of a Deputy Representative, which are listed in the regulation under the *RCY Act*. Section 2 (b) of the *Representative for Children and Youth Regulation* requires a Deputy Representative to have experience in:

> *(i) working with children,*
>
> *(ii) respecting the provision of one or more designated services, as defined in the Act, or experience, in British Columbia or another jurisdiction, that is substantially similar to this type of experience,*
>
> *(iii) investigating the critical injuries of children or the deaths of children, or*
>
> *(iv) in financial or business administration* (emphasis added)

A plain reading suggests it may be possible to have a Deputy Representative with experience only in financial or business administration (i.e., experience in only one of the four types of experience listed, which obviously would not be desirable). The then-Representative agreed with the proposal to clarify these qualifications, as does the current Representative. The Committee stated that it supported clarifying these qualifications but did not make an express recommendation to do so because regulations were beyond the scope of the Committee's mandate. This matter has not yet been addressed by Cabinet.

In relation to the qualifications of a Deputy Representative, the Representative recommends:

- **the qualifications of a Deputy Representative set out in the *Representative for Children and Youth Regulation* be clarified.**

CONCLUSION

The Representative hopes this initial submission will be helpful to the Committee, and to others who may be considering making a submission, by identifying and discussing key issues and options for consideration. We appreciate that additional issues and different perspectives are likely to emerge over the course of consultations. The Representative looks forward to hearing about these additional issues and perspectives as they no doubt will be very helpful in informing her final submission to the Committee toward the end of the consultation process.

APPENDIX: CONSOLIDATED LIST OF RECOMMENDATIONS

In relation to the current requirements for periodic review of the *RCY Act*, the Representative recommends:

- Section 30 (1) of the Act be amended to remove the reference to determining whether the functions of the Representative are still required, and to simply state, like the governing statutes of the Information and Privacy Commissioner and the Human Rights Commissioner, that the Committee will undertake a comprehensive review of the Act every five years.
- Section 30 (2) of the Act be repealed.

In relation to the *United Nations Convention on the Rights of the Child*, the Representative recommends:

- At minimum, section 6 of the Act be amended to require the Representative to take into account the *United Nations Convention on the Rights of the Child* in carrying out her functions in relation to children and youth.
- The Committee also give consideration to expanding the Representative's functions to include the education, promotion and monitoring of the rights of children and youth set out in the *United Nations Convention on the Rights of the Child*.

In relation to the *United Nations Declaration on the Rights of Indigenous Peoples,* the Representative recommends:

- At minimum, section 6 of the Act be amended to require the Representative to take into account the *United Nations Declaration on the Rights of Indigenous Peoples* in carrying out her functions under the Act.
- The Committee also engage in a process of consultation with First Nations, Métis, Inuit and Urban Indigenous Peoples about means by which the Act can be strengthened to better reflect the experiences, needs and interests of First Nations, Métis, Inuit and Urban Indigenous Peoples.

In relation to the assertion of jurisdiction over child and family services by First Nations, Métis and Inuit peoples, the Representative recommends:

- Section 22 of the Act be amended to clearly enable the Representative to enter into agreements with Indigenous Governing Bodies exercising jurisdiction over child and family services to engage the Representative to assist them in developing their own internal capacity to perform one or more of the Representative's functions, or for the Representative to directly perform one or more of her functions under the Act at the request of the Indigenous Governing Body.

In relation to systemic advocacy, the Representative recommends:

- Section 6 of the Act be amended to expressly include systemic advocacy as a primary function of the Representative, linking this function to the current monitoring mandate.

In relation to defining the Representative's individual advocacy and monitoring (systemic advocacy) jurisdiction respecting children and youth, the Representative recommends:

- The Committee give consideration to expanding the individual advocacy and monitoring (systemic advocacy) mandates of the Representative in relation to children and youth to include all publicly funded services for all children and youth, linking this expanded jurisdiction to an additional purpose of the education, promotion and monitoring of the rights of children and youth.
- If a decision is made to retain the Representative's jurisdiction to a more limited focus on publicly funded services to children and youth with extra support needs, the Committee give consideration to clarifying the scope of services and children and youth served by describing services generically, including:
    a) early childhood development services
    b) child welfare services
    c) mental health services for children and youth
    d) addiction services for children and youth
    e) services for children and youth with special needs
    f) special education (or inclusion) services for children and youth
    g) youth justice services
    h) services for youth in their transition to adulthood; and

  give the authority and responsibility to the Representative to develop agreements with ministries and public bodies as to which particular services and programs are to be included and, in the event of disagreement, the authority to refer the matter to the Committee itself for resolution.
- The Committee give consideration to including services to gender minority children and youth in the above-noted list.
- At minimum, the Representative's current mandate in relation to children and youth with special needs be expanded to include directly relevant services administered by health authorities.

In relation to the jurisdiction respecting young adults, the Representative recommends:

- The Committee consider amendments to enable the Representative to provide individual advocacy services to young adults in respect of services necessary to support their transition to adulthood, giving the authority and responsibility to the Representative to develop agreements with ministries and public bodies as to which particular services and programs are to be included and, in the event of disagreement, the authority to refer the matter to the Committee itself for resolution.
- If a decision is made to maintain the current approach of designating services to young adults by way of regulation, at minimum, the scope of services be expanded to include mental health and addiction services for young adults who were formerly in care or eligible for or in receipt of CLBC services. As well, the Committee should give consideration to the inclusion of housing services for young adults and specialized health services and supports for CLBC young adults who have significant medical needs.
- In the interest of accessible language, recent amendments changing the wording of "young adult" to "included adult" be changed back to "young adult".

- "Young adult" (or "included adult") be defined, at minimum, as adults under the age of 27 years who:
    a) are eligible for or in receipt of Community Living BC services or,
    b) are eligible for the full range of extended placement, housing, financial, transition worker, and life skills and mental health supports set out in the recently announced government initiative to enhance services and supports for young adults who were formerly in care;

  and the Committee give consideration to defining "young adult" for the purposes of (b) above more broadly as a person who was formerly in care under any legal status or agreement under the *CFCS Act* at any previous time.
- The Act be amended to give the Representative a systemic advocacy (monitoring) function in relation to services to young adults who were formerly in care and young adults in receipt of or eligible for CLBC services.
- The Act be amended to require the Representative to take into account the *United Nations Declaration on the Rights of Persons with Disabilities* in carrying out her functions in relation to young adults who are eligible for CLBC services.

In relation to reviews and investigations, the Representative recommends:

- The definition of critical injury in section 1 of the Act be amended to underscore that "health" as used in the Act includes mental and emotional health. Further, consideration be given to replacing "critical injury" with "serious harm".
- Section 11 of the Act be amended to clarify that a critical injury or death that occurs in relation to a child who is eligible for a reviewable service – such as being on a waiting list for service – is subject to review and investigation.
- Section 11 of the Act be amended to clarify that the Representative may make recommendations to a public body or director in an aggregate review report on deaths or critical injuries.
- The Act be amended to provide that, where a critical injury has arisen while the injured person was a child, an investigation may include events and incidents that occurred at least one year after the child reached 19 years of age, where the Representative believes that such an investigation raises important public policy issues.

In relation to information-gathering and disclosure, the Representative recommends that the Act be amended to:

- Give the Representative the discretion to disclose limited summary information of the results of the Representative's reviews of critical injuries and deaths to birth or adoptive parents of a child, regardless of whether that parent has or had guardianship, subject to enumerated criteria and to constraints on the subsequent disclosure or use of that information.
- Enable the Representative to directly disclose the results of reviews to delegated Indigenous Child and Family Services Agencies.
- Authorize the Representative to publicly report anonymized information about reviews of critical injuries and deaths, including the disposition of reviews and case summaries.

In relation to the authority to monitor, review, audit and conduct research, the Representative recommends:

- Section 6(1)(b) of the Act be amended to give clear authority to monitor, review, audit and conduct research in respect of quality assurance processes for all designated services.

In relation to providing information to children and youth about the Representative and facilitating contact by them, the Representative recommends:

- Section 26 of the Act be amended to provide that a child or youth in a foster home, staffed residential program, hospital, youth custody centre, facility, or other place where a designated service is provided:
  - must be informed about the Representative's role in language suitable to the child or youth's level of understanding
  - if requested, the child or youth has a right to be assisted in immediately contacting the Representative
  - the child or youth has a right to privacy in all communications with the Representative.
- The Committee consider whether these same rights should be extended to young adults who are in receipt of CLBC services.

In relation to the qualifications of a Deputy Representative, the Representative recommends:

- The qualifications of a Deputy Representative set out in the *Representative for Children and Youth Regulation* be clarified.

REPRESENTATIVE FOR
CHILDREN AND YOUTH