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Kasohkowew Child Wellness Society

Legislative review of the Child and
Youth Advocate Legislation

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1. There are services provided to different age groups under the Act. Are these age limits appropriate?
 - Currently the Child and Youth Advocate does not look at Youth who are in transition to adulthood who do not receive services under the Child Youth and Family Enhancement Act services. Child and Youth Advocate should be empowered to investigate and advocate for all youth aging out of government care up to at least age 22.
 - Youth who would qualify for PDD/AISH are very vulnerable.
 - Youth who are very low functioning may not be able to ask the Child and Youth Advocate for help and need a provision for an interested party to make a complaint on their behalf.
 - Currently the age limits and the interpretation by the Child and Youth Advocate of the area of their mandate leaves out a critically vulnerable population, especially when that population is hard to serve, transient, lives on reserve and lack telecommunications.

2. Does the Act permit the Advocate to provide appropriate services to children and youth? Should the Advocate provide services to children and youth who are receiving government services other than what is currently indicated within the Act? Please explain your answer and provide suggestions, if possible.
 - Yes, services should be provided to former youth in care who are in the process of applying for PDD/AISH or who are receiving other government services while they transition to adulthood.
 - Youth who would qualify for PDD/AISH are extremely vulnerable until they have adult services in place. The Advocate needs to be empowered to advocate for youth transitioning out of the CYFEA system as they don't have any other voice speaking for them.
 - The Act permits the Child and Youth Advocate to investigate once a former child in care dies, but nothing is done by the Child and Youth Advocate when a former child in care falls through service cracks and the death is foreseeable. This causes immense harm to the former child in care, the former foster parents, the former caseworker and the community.

3. What the Advocate can do is made possible by the Child and Youth Advocate Act. In your opinion, should the role of the Advocate stay the same? Is the Advocate able to do enough or should the Advocate be able to do more? Please explain your answer and provide suggestions, if possible.
 - The role of the Advocate needs to be well informed by the Truth and Reconciliation Commission report and recommendations.
 - Great attention needs to be paid to genuine cultural competence of the Child and Youth Advocate and all employees and contractors. Cultural competence is an ongoing responsibility of the Child and Youth Advocate. It needs to be informed by listening to the diverse first nations communities in Alberta, recognizing that listening and learning

and questioning assumptions and privilege are part of the process. The Indigenous Bar Association of Canada may be a good resource for developing ongoing policies and engagement in this area.

- Counsel engaged by the Child and Youth Advocate to represent children need to have a genuine understanding and respect for their first nations clients. They need to have fully read and reviewed the Truth and Reconciliation Report and have a professional development plan that shows how they are considering the recommendations in every area of their practice. Engagement with the communities of the children they represent should include attending ceremonial feasts, tea dances, powwows and engaging with elders to learn more about the communities. Self evaluation and reflection of unconscious biases about first nations communities and peoples need to be explored and challenged. The children and youth represented deserve no less than this.
 - The Child and Youth Advocate plays an important role in giving a voice to children and youth in care. Their day to day concerns are real. Some concerns are adequately dealt with when the caseworker has reviewed the concern and has provided an explanation of the decision which might involve a no to the child. Children who make multiple Child and Youth Advocate complaints that are found to be unfounded may be taking away resources from complaints that raise human rights issues. At the same time a child who has made multiple unfounded complaints may have a genuine complaint in the future. An approach to resolving concerns that assesses the level of concerns engaged by a complaint and has differential response levels that can be engaged may help.
 - Child and Youth Advocate resources need to also be available for concerns that a child, through no fault of their own, may not know that they have. When a band, band designate, caseworker or foster parent raises concerns that a child is being deprived of genuine cultural connection, identity and participation, these concerns deserve a real investigation as well. A child or youth may not be able to appreciate or know how their connection to their home community, first nations culture and extended family will impact their identity formation and success in transitioning to the adult world. A mechanism for complaints initiated by outside interested persons is needed.
4. Does the Act provide the Advocate with sufficient powers to conduct the roles and functions set out in the Act? Are other powers necessary?
- Privacy legislation differs provincially and federally, so there are different considerations on reserves, which are federal lands. The Child and Youth Advocate needs to be aware that there is a component of government to government relationship in their investigations. Appropriate protocol should be followed in dealing with on reserve agencies and first nations children and youth.
 - Cultural competency is essential in carrying out the mandate of the Child and Youth Advocate. Use of appropriate protocols throughout investigation, hearing and report writing are essential. The Child and Youth Advocate budget needs to include room for engaging elders from the communities in question as consultants. The Child and Youth

Advocate needs to incorporate appropriate elements in hearings that speak to respect for the natural law of First Nations. Options such as using an Eagle Feather for swearing testimony, having symbols of the first nations incorporated into hearing rooms as well as the Canadian Flag, bibles, and coats of arms.

- Provision of mental health services and traditional healing services to all participants in a Child and Youth Advocate investigation including siblings, caseworkers, directors, family members and foster parents by the Child and Youth Advocate. Federal funding for delegated first nations authorities does not adequately cover the needs that arise when an incident serious enough for an inquiry occurs. Provincial funding carved out specifically in the Child and Youth Advocate budget for mental health services appropriate for those who are involved in such proceedings would significantly help with issues relating to vicarious trauma.
 - The Child and Youth Advocate needs to be part of the negotiation of the tripartite agreements that are negotiated for delegated first nations authorities. In this way inter-jurisdictional issues can be negotiated ahead of challenging times.
5. Is the information provided by a child to an advocate sufficiently protected? Is the information provided for an investigation sufficiently protected?
- The accepted uses of information provided needs to be in writing. Documents provided from a Delegated First Nations Authority are subject to federal privacy legislation and once in the hands of the advocate also by provincial privacy legislation and the provisions of the Child Youth and Family Enhancement Act.
 - No documents used by an inquiry should be released for any other purpose.
 - Inquiry report writing of findings needs to recognize that even with names masked first nations communities can be small and details may make children and parties identifiable. This can pose a health and safety risk for caseworkers and their families and other service providers who live and work in a first nations community.
6. What the Advocate can investigate is made possible by the Act. Should the Advocate be able to investigate the same, more, less or different issues? Please explain your answer and provide suggestions.
- The Advocate needs to be empowered to investigate issues relating to former youth in care who are transitioning to adult services offered under acts other than CYFEA.
 - As successful transition to adulthood is so critical any former youth in care up to at least age 22 should be able to make a complaint to the advocate and if necessary have a guardian or an interested person make such a complaint where the former youth in care does not have the capacity to do so and it is in his or her best interest.
 - The Advocate should be empowered to investigate concerns by band designates and foster parents that a child is being deprived of genuine cultural connection, contact with home community or extended family or is being proposed to be moved across borders or where a case that engages Jordan's Principle occurs.

7. What the Advocate can report after an investigation is set by the Act. Do these reports contain enough information? Should these reports contain the same, more or different information? Please explain your answer and provide suggestions.

- These reports need to be informed by the issues raised in the Truth and Reconciliation Commission's report.
- Genuine cultural competence of the report writer is needed so that systemic issues flowing from residential schools, funding differentials as identified under the recent Canadian Human Rights Decision in the First Nations Caring Society and interjurisdictional issues such as Jordan's Principle can inform the report writing.
- Information provided in these reports may make individual children more identifiable in first nations communities.
- Reports need to be informed by a genuine understanding of the context and community in which social work takes place. Investigators should have actual experience practicing and living in first nations communities.
- Recommendations need to be culturally and contextually relevant. Blame of individual caseworkers should not be the focus. Caseworkers operate within a system and a community.
- If blame of a caseworker is posited, then a Gladue type report should be prepared to provide a fuller understanding of the context of the decision making.
- Media often sensationalizes reports and inflames the community.

8. Do you have any other suggestions or comments about the Child and Youth Advocate Act? Please comment on any topic related to the Act not addressed by this discussion guide. The Standing Committee on Legislative Offices thanks you for your input.

- The Child and Youth Advocate has the potential to play a very important role in the lives of individual children and youth and in driving systemic change and truly implementing meaningful reconciliation in child welfare.
- Resources mentioned above:
 - i. Cultural Competence:
 1. <https://fncaringsociety.com/touchstones-hope>
 2. http://indigenousbar.ca/main_e.html
 3. In person consultation with first nations in Alberta.
 - ii. Jordan's Principle:
 1. <https://www.aadnc-aandc.gc.ca/eng/1334329827982/1334329861879>
 2. <https://fncaringsociety.com/jordans-principle>
 - iii. Truth and Reconciliation Commission:
 1. <http://www.trc.ca/websites/trcinstitution/index.php?p=890>