

In the matter of the *Public Inquiries Act*, R.S.O 1990, c. P.41

And in the matter of the

INQUIRY INTO PEDIATRIC FORENSIC PATHOLOGY IN ONTARIO

**AFFIDAVIT OF JUDY FINLAY
SWORN ON JULY 16, 2007**

I, Judy Finlay, Chief Advocate of Office of Child and Family Service Advocacy, of the City of Toronto in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Advocate of Office of Child and Family Service Advocacy (“The Advocacy Office”) and have held this position since 1991. As such, I have personal knowledge of the matters to which I hereinafter depose, except where otherwise stated to be based on information or belief.

2. As Ontario’s Chief Advocate for children, youth and families, I have planned, co-ordinated and managed the provision of advocacy services for children/youth and their families in child welfare, children’s mental health, young offender, education and the developmental service sectors across Ontario. I have worked to promote the voice and interests of children and youth in accordance with the *United Nations Convention on the Rights of the Child*. I have investigated and reviewed the care of children/youth in jails and detention centres, agencies, institutions, and group care residential settings. I have provided expert testimony in judicial and quasi-judicial proceedings (i.e., transfer hearings and Inquests). I have

been involved in the development of legislation, policy and best practices including highlighting service and system gaps and advising Ministers.

Advocacy Office

3. The Advocacy Office is an agency established pursuant to the *Child and Family Services Act*, R.S.O. 1990, c. C.11 (the CFSA). As an agency of the Ontario Ministry of Children and Youth Services (the Ministry), it is authorized to protect the rights and interests of children and families who are receiving or seeking services through the Ministry anywhere in the Province of Ontario.

4. The Advocacy Office is the oldest agency of its kind in Canada. It was established in 1978. In 1984, the Advocacy Office received its legislated mandate under section 102 of CFSA. The Advocacy Office ensures the provision of a range of advocacy services - a crucial safeguard built into the CFSA. As Chief Advocate, I am committed to elevating the voice of children and youth so that they are truly heard in all matters that concern them. My Office ensures effective intervention when children who live outside of their family's care report abuse or harsh treatment and that the legislated rights and entitlements of children and youth are respected by care providers.

Mandate and Mandated Functions

5. The Advocacy Office is mandated to:

- advise the Minister of Children and Youth Services on matters that concern children and families;

- provide advocacy services to young persons in conflict with the law and young persons who are in the custody of or detained by the state;
- provide advocacy services to children who have complex needs including mental health problems;
- assist young people in understanding and asserting their rights defined in the CFSA, the *Youth Criminal Justice Act (YCJA)* and the *Ministry of Correctional Services Act (MCSA)*;
- conduct reviews of facilities such as detention and custody facilities with a view to identifying where improvements, if necessary, can be made and advise the Minister;
- intercede and speak for children and their families who might not be able to get needed services or solutions to problems without help;
- provide advocacy for communities with complex case situations where more than one government or community agency need to be involved;
- ensure that children/youth-in-care know and understand their rights;
- ensure the enforcement of the laws protecting children/youth-in-care from abuse or harsh treatment;
- provide services to youth in conflict with the law (secure custody, detention, open custody, community supervision, probation);
- provide services to children and youth receiving child welfare and mental health services (including the securing of treatment, residential care, treatment foster homes care, family care); and
- provide advocacy services to other children and youth in the care of the state or in need of assistance.

6. The children and youth who receive advocacy services from the Advocacy

Office include:

- children and youth in the care of a Children's Aid Society, including those placed in foster homes, group homes, and other residential facilities for out-of-home care;

- young people held in youth custody facilities, including both open custody and closed custody detention and custody facilities;
- young people who are held in police and court holding cells, and who are transported to and from those holding cells;
- children and youth placed in children's mental health centres, including those placed in secure treatment on an involuntary basis;
- pupils of residential and demonstration schools for the deaf, blind and learning disabled; and
- children and youth who are seeking or receiving any other services under the CFSA.

7. As Chief Advocate, I report to the Deputy Minister for administrative purposes and to the Minister directly for substantive issues and concerns. While these reporting channels exist, the Advocacy Office has operated historically at an "arms-length" from the government. In November, 2006, the current government of Ontario introduced legislation to make the Office of the Child and Youth Advocate independent. Bill 165, *the Provincial Advocate for Children and Youth Act, 2007* (PACYA) received royal assent on June 4, 2007. Bill 165 has not yet been proclaimed in force. Independence will offer the Office of the Child Advocate unfettered access to the most vulnerable children and youth.

Vulnerability of Children and Youth in Residential Care

8. Children and youth living in out-of-home residential care are particularly and uniquely vulnerable to mistreatment and abuse leading to injury and, in the most serious cases, death.

9. Children and youth living in residential care are particularly vulnerable to abuse and mistreatment because they are isolated from their natural advocates such as parents and other relatives, and because the facilities in which they live are often isolated from the community. Depending on the type of residential care facility, some children and youth are made more vulnerable because they are stigmatized (for example, young offenders in custody and young people in mental health facilities) or because of disability (young people who are blind or deaf, or who are developmentally disabled).

10. This vulnerability is exacerbated by the difficulty children and youth in care experience when attempting to report or complain about inappropriate treatment. Many children and youth report a fear of reprisals and a climate of fear and intimidation in residential care facilities. Also, children and youth report that they are deterred in reporting or complaining about abuse and mistreatment because of a perception that complaint and reporting mechanisms, and the people responsible for them, are part of the same institutions and systems that permitted the abuse or mistreatment in the first place.

Critical Incident and Child Death Reviews

11. At present, there is no independent body in Ontario that conducts critical incident or child death reviews. A number of Child Advocates across Canada have had, or currently have the mandate to conduct such reviews and there are varying opinions among them about the suitability of that mandate. The main concern

shared by other Child Advocates about this mandate is the significant demand that a critical incident and child death review mandate places on the staff and financial resources of a Child Advocate Office. In the past I have recommended that Ontario's Advocacy Office should have the ability to conduct critical incident and child death reviews. I also recommended that if the Advocacy Office was given this mandate, it needed to be supported by adequate funding, and that the authority to conduct a critical incident or child death review should be discretionary, not mandatory.

12. In my view, whether or not it forms part of the mandate of the Child and Youth Advocate or some other independent agency, a body to conduct critical incident and child death reviews in Ontario should:

- be independent from any ministry of the government, and from any agency or institution responsible for delivering services that could be the subject of a review;
- be composed of a multi-disciplinary team including but not limited to medical experts;
- have investigative powers;
- be accountable to the public and have the authority to make public reports; and
- be provided with adequate funding.

Expertise of Defence for Children International-Canada

13. Defence for Children International-Canada (DCI-Canada) is a Canadian non-profit organization and registered charity that promotes children's rights in accordance with the *United Nations Convention on the Rights of the Child*. I have

known about, worked in partnership with, and participated in the work of DCI-Canada since 1991. ~~Y~~ R.M.

14. I have worked directly with DCI-Canada on a number of issues, including responding to and investigating incidents of institutional child abuse in Ontario, investigating child deaths and making recommendations to prevent similar deaths through Coroner's Inquests, and the legislative proposal to establish an independent Child Advocate Office in Ontario.

15. The Advocacy Office worked in partnership with DCI-Canada in regard to Coroner's Inquests into the deaths of three young people who died while in state care: James Lonnee, who was murdered in the young offender unit of the Wellington Detention Centre; Stephanie Jobin, who was a Crown ward and suffocated while being physically restrained by staff in her Brampton group home; and David Meffe, who committed suicide in the Toronto Youth Assessment Centre, a young offender detention centre in Toronto. DCI-Canada did not have standing in the James Lonnee Inquest but followed the proceedings carefully and worked with parties to develop recommendations that support positive systemic change. DCI-Canada did have standing in the Stephanie Jobin and David Meffe Inquests.

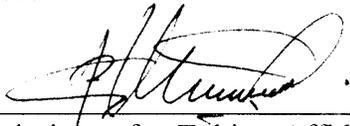
16. DCI-Canada has demonstrated special knowledge not only in the systemic problems that contributed to these deaths, but also the critical examination of the processes used to investigate these deaths. As part of its work to address and

prevent institutional child abuse, including its participation in these three inquests, DCI-Canada has made submissions and recommendations to improve the investigation of deaths of children and youth in residential care.

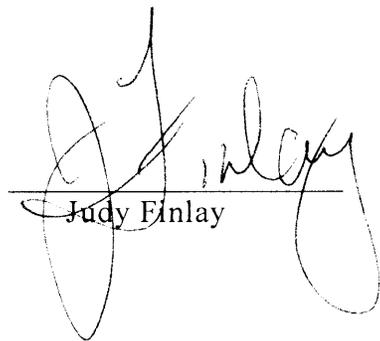
17. DCI-Canada also played a special role in introducing the perspectives of directly affected young people in state care into Coroner's Inquests in Ontario. DCI-Canada organized groups of young people with relevant, first-hand experience living in residential care facilities to apply for standing in the James Lonnee, Stephanie Jobin, and David Meffe Inquests. The youth group organized for the James Lonnee Inquest was not granted standing. The youth groups organized for the Stephanie Jobin and David Meffe Inquests were granted standing, in conjunction with DCI-Canada. The members of these youth groups met regularly to analyze the evidence, give direction to legal counsel, and help create recommendations for positive systemic change.

18. I make this affidavit in support of DCI-Canada's application for standing and for no other or improper purpose.

Sworn before me at the)
City of Toronto, in the Province of)
Ontario, this 16th day of)
July, 2007.)



A Commissioner for Taking Affidavits, Etc.



Judy Finlay

ROUMIANA MINTCHEV, a Commissioner, O.S.,
City of Toronto, for Susan E. Fraser,
Barrister and Solicitor.
Expires May 28, 2010.