

# Child Advocacy Renewal in Ontario

## Progress Report and Agenda for Action

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Defence for Children  
International-Canada

Toronto, June 2006



**Defence for Children  
International-Canada**

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Child rights matter.





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PROGRESS REPORT AND AGENDA FOR ACTION

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Action

By Matthew Geigen-Miller

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# Introduction

## THE CONTEXT AND PURPOSE OF THIS REPORT

The Office of Child and Family Service Advocacy (OCFSA) is an important safeguard for young people in care in Ontario. It is mandated to “co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek” certain services provided by the Ministry of Children and Youth Services, and to “advise the Minister on matters and issues concerning the interests of those children and families.”<sup>1</sup> In practical terms, this means that the OCFSA provides assistance to young people who are in the care of the government, their families and support people, and also to family members of young people with special needs. The OCFSA provides clients with information about rights, complaint procedures, and how to participate in decisions that will affect them. It intervenes in the child and youth services system to negotiate and problem-solve on behalf of clients. The OCFSA also conducts reviews of programs and facilities, researches and develops best practice standards for child and youth services, and gives advice to the government. Clients of the OCFSA include children and youth in the care of children’s aid societies and children’s mental health centres under the *Child and Family Services Act*; young people in detention, custody, and police or court holding cells under the *Youth Criminal Justice Act*; students at residential and demonstration schools for the blind, deaf and learning disabled; and families of children and youth who have complex special needs. The advocacy services

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1. *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 102.

provided by the OCFSA play an important role in the protection of the rights of young people in government care, and the prevention of abuse in Ontario's child and youth services system.

In June 2003, the OCFSA was thrust into the spotlight, becoming the subject of an unprecedented degree of media and political attention. This attention was triggered by a DCI-Canada report that criticized the Ontario government's treatment of the OCFSA. During subsequent media interviews, OCFSA Chief Advocate Judy Finlay expressed concern that the Ontario government was attempting to impose a contract on her that would give senior bureaucrats veto power over her investigations and reports to the public.<sup>2</sup> In combination, these factors prompted then-Opposition Leader Dalton McGuinty to announce that a Liberal government would introduce legislation to establish a new Office of the Children's Advocate independent of government and reporting to the Legislative Assembly. The Liberal Party won the provincial general election on October 2, 2003 and formed a majority government.

Now, over two years since the Liberal Party formed the provincial government, is Ontario any closer to getting an independent Office of the Child and Youth Advocate? If we have made progress, is it toward the right model—the model that will best protect and serve young people in care in Ontario? And, what steps should the government take to deliver on this important commitment? These three questions are the focus of this report.

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2. See for example: Murray Campbell, "Child Advocate's office has suffered under Tories," *Globe and Mail*, 21 June 2003, A21; Margaret Philp, "Child advocate sees threat to office: Ontario wants to place restrictions on independence and power, she says," *Globe and Mail*, 26 June 2003, A11; Patricia Orwen, "Child advocate won't be muzzled," *Toronto Star*, 5 July 2003, A1.

## Progress to Date

AN ANALYSIS OF THE GOVERNMENT'S PROGRESS TOWARD  
CHILD ADVOCACY RENEWAL IN ONTARIO

### **Child Advocacy Renewal in Ontario**

We use the term *Child Advocacy Renewal* to describe the project to establish a new Office of the Child and Youth Advocate in Ontario. This term touches three important goals that should be served by the creation of a new Office of the Child and Youth Advocate:

- Acknowledge Ontario's history of child advocacy
- Renew public confidence in formal child advocacy services
- Renew the culture of child advocacy in Ontario

#### *Acknowledge Ontario's History of Child Advocacy*

By using the word *renewal*, we acknowledge that Ontario is not starting from scratch in the area of child and youth advocacy. On the contrary, Ontario has a long history of formal child and youth advocacy services. The Office of Child and Family Service Advocacy (OCFSA) was established in 1978 as Canada's first provincial child advocacy office. This office's mandate was entrenched in legislation when Ontario passed the *Child and Family Services Act* in 1984. A focus on renewal emphasizes the importance of learning from and building on the long history, accumulated expertise and excellent track record of Ontario's existing OCFSA.

### *Renew Public Confidence*

Under the previous government, the OCFSA faced the threat of interference from the government. This threat served as a reminder that, unlike similar offices in other provinces, the OCFSA is not independent of the government that it monitors. In the same period, DCI-Canada released a report which found that the OCFSA lacks many of the tools and powers that are granted to similar offices in other provinces. These weaknesses can undermine the public's confidence in the OCFSA. Most significantly, they can undermine the confidence of the children, youth and families who rely on its advocacy services. To earn and maintain the credibility of its current and prospective clients, Ontario's child advocate must demonstrate that it represents their interests and acts independently of the government and service providers. It must also demonstrate that it has the tools and powers to make meaningful interventions on behalf of its clients. The establishment of a new Office of the Child and Youth Advocate that is independent of government, and that is granted meaningful tools and powers, helps to renew the public's confidence in Ontario's system of advocacy for children and youth.

### *Renew the Culture of Child Advocacy*

In jurisdictions across Canada and around the world, communication plays an important role in the work of child advocate offices. These child advocates often act as catalysts, igniting public debate about children's interests, children's rights, and child advocacy. In this role, a child advocate helps to develop a culture of child advocacy among lawmakers, professionals and service providers, and the general public. When compared with similar offices elsewhere in Canada, the OCFSA has the fewest tools and powers with which to communicate, raise awareness, and participate in public policy debate. The OCFSA also lacks the independence from government that is required to develop positions and communicate autonomously. The establishment of a new Office of the Child and Youth Advocate that has the tools and powers to communicate effectively will help to renew the culture of child advocacy in Ontario.

### **Government Action to Date**

Our account of the government's progress toward a new Office of the Child and Youth Advocate begins approximately four months before the Liberals formed a government in Ontario and continues to the present, covering two key actions that occurred after the October 2003 election.

### *Ontario Liberal Party Announcement, July 2003*

The Ontario Liberal Party announced its position regarding the OCFSA in a news release issued on July 9, 2003. This news release promised:

- A future Liberal government will pass legislation creating an independent Office for the Child Advocate. This office would report to the Legislature rather than the government
- The legislation will require the appointment of the Child Advocate through an all-party committee of the Legislature. This appointment will be for a fixed term
- The legislation will also require the Child Advocate's budget to be set by the Board of Internal Economy, an all-party committee of the Legislature that is chaired by the Speaker<sup>3</sup>

### *Third-Party Review*

The next major step occurred after the Liberals won the Ontario general election in October 2003. The Ministry of Children and Youth Services commissioned researchers to study the OCFSA and develop recommendations regarding the establishment of a new Office of the Child and Youth Advocate. The contract for this review was granted to a consortium of four researchers organized by Whitehead Research Consultants Ltd., a London, Ontario-based consulting firm. The third-party review began in April 2004. The final report of the third-party review was submitted to the Minister of Children and Youth Services dated August 20, 2004.

### *Ministry of Children and Youth Services Announcement, March 2005*

In early March 2005, Children and Youth Services Minister Marie Bountrogianni announced that legislation to establish Ontario's new Office of the Child and Youth Advocate was imminent. A news release issued on March 8, 2005 stated:

The McGuinty government will introduce legislation this spring that, if passed, would better protect the interests of vulnerable children and youth by establishing an independent child advocate in Ontario, Children and Youth Services Minister Marie Bountrogianni announced today.<sup>4</sup>

The spring sitting of the Legislature began on March 29, and ended when the Legislature rose for the summer break on June 23. However, the government did not introduce a bill in the spring sitting of the Legislature. When the fall sitting of the Legislature ended on December 15, it became clear that a bill would not be

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3. "Ontario Liberals to ensure Child Advocate's independence," News Release (Ottawa: Canada NewsWire, July 9, 2003).

4. "McGuinty Government Moves Make Ontario's Child Advocate Independent," News Release (Toronto: Ministry of Children and Youth Services, March 8, 2005).

introduced at all in 2005. To date, the government has not introduced a bill, nor has it indicated when it might do so.

### **Third-Party Review**

The third-party review is significant because it appears to be a principal source of the government's policy regarding child advocacy renewal in Ontario. The Ontario government does not appear to have conducted any other major consultations or research projects regarding its commitment to strengthen child advocacy. This review therefore deserves some consideration. A detailed analysis of the third-party review is provided in a supplementary paper, "*Background Paper: Detailed Analysis of Government Action to Date and the Third-Party Review.*" What appears here draws substantially from the findings and conclusions in that paper. This section is organized under three headings:

- Points of agreement with the third-party review's recommendations
- Concerns regarding weaknesses in the process used to conduct the third-party review
- Concerns regarding flaws and omissions in the analysis and recommendations of the third-party review

#### *Points of Agreement*

The *Analysis and Recommendations* section of the third-party review final report makes several recommendations regarding the new Office of the Child and Youth Advocate. A significant number of these recommendations are valid and appropriate, and appear to reflect a general consensus among child and youth advocacy organizations and professionals in Ontario. These points of agreement are summarized as follows:

*New Legislation, New Office.* The government should pass legislation creating an Office of the Child and Youth Advocate, a new office of the Legislature. This office should be independent of any government ministry, and its budget should be set by the Board of Internal Economy. The Advocate should be appointed to a fixed term by an all-party committee of the Legislature.

*Similar Role.* The Office of the Child and Youth Advocate should be mandated to serve the same client groups currently served by the OCFSA. And the principal function of the Office of the Child and Youth Advocate should be the same as the OCFSA: to give effect to the child or youth's right to be heard. Also, the Office of the Child and Youth Advocate's work should be governed by the principle that, regardless of who makes initial contact with the Advocate regarding a young person, the client is always the young person in question.

*Range of Services.* The third-party review identifies a range of advocacy services that should be provided by the new Office of the Child and Youth Advocate. This includes education regarding rights and services, advising clients about their rights, assisting clients to pursue internal complaints and appeals, receiving and responding to complaints, conducting research and systemic advocacy, and monitoring the implementation of recommendations.

*Accountability.* The Office of the Child and Youth Advocate should make annual reports to the Legislature, and be authorized to make special reports to the Legislature. The Office of the Child and Youth Advocate should establish a system of performance measures to evaluate its effectiveness.

*Advocate's Powers.* The Office of the Child and Youth Advocate should be granted a number of powers through legislation, including: the power to cease or refuse to act on behalf of a young person if he or she believes that a complaint is frivolous or made in bad faith; the power to enter facilities where services under the Advocate's mandate are provided, and access to all documents held by a service provider that pertain to a client; the power to seek standing at coroner's inquests and public inquiries that relate to the Advocate's mandate, and to be represented by its own legal counsel; immunity from civil liability for actions performed in good faith in the course of the Advocate's duties; and the Advocate's findings, decisions, reports, etc. should not be subject to judicial review.

*Right of Access.* Children who receive care under the *Child and Family Services Act*, and who have the right to know about and to contact the OCFSA should have the same rights with respect to the Office of the Child and Youth Advocate. Also, child and youth facilities licensed under the *Child and Family Services Act* that are obligated to display posters informing residents about the OCFSA should have the same obligation with respect to the Office of the Child and Youth Advocate.

*Offenses.* It should be an offence to interfere with the performance of the Advocate's duties; or to impose a sanction or penalty on anyone who attempts to enforce his or her rights, or who gives information to the Office of the Child and Youth Advocate. Also, good faith reports to the Office of the Child and Youth Advocate should be shielded from civil liability, even when a report eventually proves to be incorrect.

### *Concerns About Weaknesses in the Process*

There are a number of concerns about weaknesses in the process of the third-party review. Generally, these weaknesses relate to three findings regarding the methods and process of the review. Namely, that the review:

- Was closely controlled by officials in MCYS
- Was rushed
- Did not include adequate consultation with affected young people

*Controlled by officials in MCYS.* The third-party review was closely controlled by MCYS officials at every stage. First, through a contracting arrangement that allowed MCYS officials to determine the scope and parameters of the review, and that made the third-party review team directly accountable to the same officials. Second, MCYS officials enjoyed considerable access and influence with the researchers conducting the third-party review. Finally, MCYS officials were responsible for receiving, analyzing and acting upon the recommendations made by the third-party review. These officials were responsible for shaping the proposed legislation to establish an Office of the Child and Youth Advocate.

*Rushed.* The researchers conducting the third-party review were permitted a maximum of eight weeks to perform the review, including the literature review, policy review, interviews with expert informants, and the preparation of a draft report to MCYS.<sup>5</sup> It is unlikely that an eight-week period would permit a thorough research and policy review. And this short period prevented a thorough process of interviews with expert informants.

*Inadequate consultation with affected young people.* The third-party review included interviews with affected young people. However, these interviews did not achieve an adequate consultation. At most six young people who have experience receiving relevant government services were interviewed during the review (additional young people were interviewed who had no direct experience receiving relevant government services). All youth informants were interviewed in a group format, in contrast with the one-on-one format used for other informants. Also, all youth interviews took place within a three-hour window on a single day. Each young person was assigned to one of three one-hour group interviews, which were conducted back-to-back in the middle of the day on a school day.

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5. The contract requirements for the third-party review are described in the Ministry of Children's Services Request for Proposals, which was posted on the government's on-line tendering web site, <http://www.merx.com>, in early 2004. The full text of the request for proposals is provided in *Appendix C* to the background paper that supplements this report.

### *Concerns about Analysis and Recommendations*

In addition to concerns about process, and in the context of these concerns, a number of concerns have been raised regarding weaknesses in the analysis and recommendations of the third-party review. Specifically, the review:

- Recommended against investigative powers
- Did not consider whether the Advocate should have a role in death reviews
- Recommended against granting powers to follow up on recommendations
- Recommended that the Advocate's staff should be part of the Ontario Public Service

*Investigative Powers.* The third-party review concluded that the Office of the Child and Youth Advocate should not have investigative powers, such as the power to subpoena documents and other things, and the power to summon witnesses and compel them to testify under oath. The review's arguments against investigative powers are flawed. The review suggests that investigative powers would conflict with the Advocate's case advocacy function; that investigation must be linked to an adjudication of rights and responsibilities, which would be inappropriate for the Advocate; and that investigative powers would be redundant because the investigative function is already performed by other agencies in Ontario. None of these claims holds up to scrutiny. Furthermore, the third-party review fails to consider the important role that investigative powers can play in monitoring and reporting on systemic issues, or in gaining timely access to information for the purpose of case advocacy.

*Death Reviews.* The third-party review did not consider whether the Office of the Child and Youth Advocate should have a role in reviewing the deaths of children who were receiving residential, child protection or similar services at the time of death. This is a significant omission, because there is a need for debate about the role that a child advocate could play in those reviews. Ontario's current system of child death reviews has been in place for 10 years. In that period, jurisdictions all over the world—including Saskatchewan and British Columbia—have overhauled their child death review systems and given the independent children's advocate, or equivalent officer, a principal role in that system. The available evidence regarding Ontario's child death review system indicates that many improvements are required to bring Ontario into step with the norms for child death reviews, including transparency to the public and independence from the agencies responsible for the deceased child. The Office of the Child and Youth Advocate could play a central role in the improvement of Ontario's child death review system. Thus, the process of child advocacy renewal in Ontario must include a serious debate about the option of including death reviews in the new Advocate's mandate.

*Advocate's Recommendations.* The third-party review recommended against granting the Office of the Child and Youth Advocate powers to follow up on recommendations that it makes to government agencies. The review only considered whether the Advocate should have the power to order the government to implement recommendations, similar to an order by an administrative tribunal or court. This is a strong power—one that is not held by any children's advocate office in Canada. The review failed to consider another option: empowering the Advocate to request progress reports regarding the government's implementation of the Advocate's recommendations. This power is much more reasonable because it does not obligate the government to do anything other than report; the choice to implement an Advocate's recommendation in whole, in part, or not at all remains with the government. The power to request progress reports is common among other children's advocacy offices in Canada, and in similar agencies such as Ombudsman offices. This power has support among experts on child advocacy, and would strengthen the Advocate's capacity for systemic advocacy.

*Advocate's Staff.* The third-party review recommended that the employees of the new Office of the Child and Youth Advocate should be members of the Ontario Public Service. This diverges from the practice in children's advocate offices elsewhere in Canada, and in other offices of the Legislature within Ontario, such as the Ombudsman and Auditor General. If implemented, this recommendation would all but negate the independence gained by making the Office of the Child and Youth Advocate an office of the Legislature.

### **Conclusion: A Well-Intended but Flawed Process**

Our fundamental finding regarding child advocacy renewal in Ontario is that it has been a well-intended but flawed process. The available evidence suggests that the political leaders, ministry officials and review researchers who played a role in the project to establish an Office of the Child and Youth Advocate acted in good faith. Nevertheless, neither a sound process nor an acceptable result have been achieved so far. We identify four specific flaws:

- A policy development process that was owned and controlled by officials who are, or appear to be, in a conflict of interest
- A failure to consult with children and youth who will be directly affected
- A set of recommendations that falls short of a robust and satisfactory model for child and youth advocacy in Ontario
- Planned legislation that has stalled, with no indication that the government intends to move forward with legislation in the near future

### *Conflict of Interest*

In most cases, it would make sense to place responsibility for a public policy decision in the hands of the government officials who administer the policies and programs in question. However, the establishment of a new Office of the Child and Youth Advocate is a special case. The officials whose administrative actions, policies and programs will be monitored, investigated, and which may be the subject of future advocacy interventions, should not be allowed to determine the mandate and powers of the Advocate. MCYS officials have an interest in being relatively free from the burdens of an Advocate's monitoring, investigation and advocacy interventions. This interest is in conflict with the public interest, and particularly with the interests of future clients of the Office of the Child and Youth Advocate, who benefit from an Advocate with greater capabilities to monitor, investigate and intervene.

### *Failure to Consult with Affected Youth People*

The Ontario government owes young people a unique duty of consultation in the project to establish a new Office of the Child and Youth Advocate. First, section 107 of the *Child and Family Services Act* guarantees young people living in residential care the right to be heard, and for their views to be considered, when the government or service providers make decisions that will affect them.<sup>6</sup> This right applies to children living in foster homes, young offender detention and custody facilities, and other residential facilities licensed under the Act, such as group homes and children's mental health centres.<sup>7</sup> Second, article 12.1 of the United Nations Convention on the Rights of the Child states that children have a right to be heard, and for their views to be considered, when a government makes decisions that will affect them.<sup>8</sup> The young people who are entitled to be consulted under these provisions include children and youth who fall under the mandate of the OCFSA, and/or the anticipated mandate of the proposed Office of the Child and Youth Advocate. The meager consultation attempted under the third-party review is clearly inadequate. Further, MCYS has not attempted or proposed any further consultation with young people following the third-party review. In March 2005 DCI-Canada submitted a proposal to MCYS to conduct a consultation with affected young people regarding child advocacy renewal in Ontario, but this proposal was rejected.<sup>9</sup> The Ontario government has not approached a reasonable standard of consultation with young people regarding the project to establish a new Office of the Child and Youth Advocate.

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6. R.S.O. 1990 c. C.11, s. 107.

7. The scope of the application of section 107 is established by sections 3(1) and 99 of the Act.

8. Convention on the Rights of the Child, [1992] Can. Tr. Ser. No. 3, art. 12.1.

9. The full text of this proposal is provided in *Appendix E* to the *Background Paper* that supplements this report.

*Recommendations Fall Short*

The third-party review makes a number of recommendations regarding the new Office of the Child and Youth Advocate that are sensible and valid. However, the third-party review also makes recommendations that are flawed. Some recommendations undermine or contradict other valid recommendations. Other recommendations would significantly weaken the capabilities of the Office of the Child and Youth Advocate, if implemented. The set of recommendations advanced by the third-party review fails to deliver the best mixture of powers and functions that is possible. This set of recommendations falls short and should not be the basis for legislation to establish an Office of the Child and Youth Advocate. Children and youth who will one day rely on the Office of the Child and Youth Advocate need and deserve better.

*Stalled Legislation*

More than one year has passed since the Minister of Children and Youth Services announced that legislation to establish an Office of the Child and Youth Advocate was soon to be introduced. Based on the government's stated timeline, this legislation is long overdue. The government has not indicated the reason for the delay, nor has it announced a new timeline for the introduction of a bill. It is clear that a bill cannot be introduced earlier than the fall 2006 sitting of the Legislature, leaving only one year in the present term of government to pass the necessary legislation. Unless child advocacy renewal becomes a priority for this government in the very near future, it is unlikely that the Ontario Liberal Party's promise to establish a new Office of the Child and Youth Advocate will be delivered in the present term of government.

# Moving Forward

A NINE-POINT PLAN TO ADVANCE  
CHILD ADVOCACY RENEWAL IN ONTARIO

DCI-Canada proposes a nine-point plan to advance the child advocacy renewal agenda in Ontario, organized in two themes:

- A process that earns public confidence
- Strong legislation for a strong Office of the Child and Youth Advocate

## **A Process that Earns Public Confidence**

Democratic societies demand more from our governments that good results; we also demand a sound process. We expect a public policy decision-making process to bear certain characteristics. For example, it should be reasonably transparent, accessible and open to the input of affected persons, and should be performed in the public interest, and in particular the officials responsible for the decision should not be in a conflict of interest.

To earn the public's confidence, the process of child advocacy renewal must include the following measures:

- Address conflicts of interest
- Consult with affected young people
- Introduce a bill early in the fall 2006 sitting of the Legislature

### *1. Address Conflict of Interest*

The appearance of a conflict of interest undermines the credibility of the project to establish an Office of the Child and Youth Advocate. The project to establish an Office of the Child and Youth Advocate should not be controlled by government officials who will one day be directly subject to the monitoring, advocacy interventions and reports of that Advocate. This means, first, that officials in MCYS should not have charge of this file any longer. It also means that officials in other ministries and government programs that may fall under the Advocate's mandate should not have charge of this file. This includes the Ministry of Community Safety and Security (police custody and holding cells), Ministry of Health and Long-Term Care (residential mental health services under the *Mental Health Act*), and Ministry of Education (residential and demonstration schools). Responsibility for this file could either be moved to another ministry, or a special project office could be organized under the auspices of a central agency such as the Cabinet Office.

### *2. Consult with Affected Young People*

Young people who will be affected by legislation to establish an Office of the Child and Youth Advocate have a right to be consulted about that legislation. To be meaningful, this consultation should take place before the government's policy is finalized, be directly linked to the decision-makers, be reasonably representative, and allow the participants time for preparation before being asked for their views. To ensure reasonable representation of affected young people, the consultation should include young people from all regions of the province, all service sectors under the Advocate's proposed mandate, and should take special care to include visible minority, immigrant, aboriginal, GBLT and disabled youth, as these groups often have unique human rights concerns. The consultation timeline should allow for advance notice to prospective participants (approximately four weeks), and sufficient preparation of participants once a participant group has been organized (approximately two weeks). It is possible that a consultation that meets all of these requirements could be organized and completed before the end of August 2006.

### *3. Introduce a Bill Early in the Fall 2006 Sitting*

Once the fall 2006 sitting of the Legislature begins, there will be one year left in the present term of government to introduce and pass legislation to establish an Office of the Child and Youth Advocate. If the introduction of the bill occurs too late in this period only two outcomes will be possible: the bill will die on the order paper when an election is called; or, the bill will pass, but will have to be rushed through the Legislature, preventing thorough consultation with stakeholders and debate by members. Either of these two possibilities would undermine the public's confidence that the government is acting diligently, appropriately, and in

the public interest. The government must introduce a bill as early as possible in the fall 2006 sitting of the Legislature.

### **Strong Legislation for a Strong Office of the Child and Youth Advocate**

Legislation to establish a new Office of the Child and Youth Advocate is not introduced every year, or even decade. The bill introduced by this government will have a long-lasting impact; it should be crafted and judged accordingly. Young people who are under the care or supervision of the government will depend on the new Office of the Child and Youth Advocate for many years to come. The legislation should ensure that these young people are provided with a strong Advocate that possesses the best possible mix of powers and functions.

To ensure strong legislation to establish a new Office of the Child and Youth Advocate, the bill must, at minimum, provide for the following:

- Independence
- Comprehensive mandate
- Access
- Reporting
- Investigative powers
- Death reviews

#### *4. Independence*

Independence from government is vital both to the effectiveness of the Office of the Child and Youth Advocate, and to the public's confidence in the Advocate. Measures necessary to ensure the independence of the Office of the Child and Youth Advocate include: a fixed term of appointment; accountability to the Legislature, not to a minister; a budget set by the Board of Internal Economy; and authority to hire staff who will be independent from the government and the Ontario Public Service.

#### *5. Comprehensive Mandate*

The mandate of the Office of the Child and Youth Advocate consists, generally, of two elements: the range of persons that the Advocate is obligated to serve, and the functions that the Advocate is authorized to perform on behalf of those persons. The Office of the Child and Youth Advocate's client group should remain the same as the client group of the OCFSA. However, this mandate must be entrenched in legislation in its entirety—unlike the OCFSA, whose client group is established in part by legislation, the remainder being established by a patchwork of agreements with various ministries and programs. Also, the Office of the Child and Youth Advocate should be authorized to perform a comprehensive range of advocacy services on behalf of its clients. First, the Advocate must offer a

spectrum of advocacy services to individual clients, including the provision of advice and information, receiving and responding to complaints, and intervening in the service system to negotiate and problem-solve on behalf of young people. Second, the Advocate must be authorized to perform systemic advocacy, in which the Advocate intervenes to address a characteristic or problem of the service system in general, rather than the treatment of a particular client. The Advocate's systemic advocacy functions should include reviewing and reporting on facilities, programs and policies. Finally, the Advocate must be authorized to advocate proactively by providing programs of information and education to professionals, service providers, and young people.

#### *6. Access*

Mutual accessibility is essential to the effectiveness of a child and youth advocate: the Office of the Child and Youth Advocate must have unencumbered access to young people who fall under its mandate, and young people who require advocacy services must have unencumbered access to the Advocate. The Advocate must be empowered to enter any facility or premises in which young people are receiving care or services. Young people under the Advocate's mandate must have the right to know about the Office of the Child and Youth Advocate, to contact the Advocate, and to communicate privately with the Advocate by phone, mail, in person, or by other means. And legislation must both impose a duty of caregivers and service providers to facilitate young people's access to the Advocate, and make it a punishable offense to interfere with a young person's attempt to communicate with the Advocate.

#### *7. Reporting*

The production of public reports is vital to the work of the Office of the Child and Youth Advocate. Public reporting makes the Advocate's activities transparent to the public, ensures and reinforces the Advocate's accountability to the Legislature, and strengthens the Advocate's effectiveness in case advocacy, systemic advocacy, and public education. The Office of the Child and Youth Advocate must be required to make a general annual report to the Legislature. Further, the Advocate must be empowered to make special reports to the Legislature when it deems such a report to be in the public interest. All reports to the Legislature should be available and easily accessible to the public. To ensure that the Advocate is free to report in a free and open manner, and to safeguard the Legislature's right to information, the Advocate must be immune from civil liability for statements made in its reports to the Legislature. Also, the Advocate should have the power to request progress reports regarding the implementation of recommendations made to government agencies, when those recommendations are contained in a formal report to the Legislature. This power will assure legislators, interested individuals and organizations, and the general

public that there is a degree of accountability for the recommendations that the Advocate makes in formal reports to the Legislature.

### 8. *Investigative Powers*

Formal investigative powers are important for the new Office of the Child and Youth Advocate for two reasons. First, *formal investigative powers strengthen individual case advocacy*. Gathering information about a client's treatment by government agencies plays a major role in the provision of effective case advocacy. In many cases, an advocacy client's circumstances demand urgent action. The power to subpoena documents and summon witnesses provides more rapid access to needed documents and information, because it prevents a service provider from stalling the information disclosure process. It is important to note that other officers of the Legislature who have these powers rarely use them; rather, the possibility that these powers will be invoked tends to preempt stalling or other obstructionist tactics on the part of officials who possess the information in question. Second, *formal investigative powers are an essential component of systemic advocacy*. Identifying, monitoring and reporting on systemic issues and problems in the child and youth services system requires an ability to gather information about that system in systematic and reliable fashion. At minimum, the Office of the Child and Youth Advocate's formal investigative powers should include: the power to subpoena documents and other things, and the power to summon witnesses and compel them to testify under oath.

### 9. *Death Reviews*

Ontario needs a credible, independent system to review the deaths of children and youth who were receiving residential and similar government services at the time of death. Jurisdictions across North America and around the world are adopting a child death review model that makes a children's advocate, or equivalent officer, responsible for leading and coordinating the death review system. In this model, the independence and public accountability of the children's advocate contribute to the review system's credibility, while the advocate's investigative powers and ability to follow up on recommendations contribute to the review system's effectiveness. Three examples of this model are the Saskatchewan Child Death Review Committee, the Queensland, Australia Child Death Case Review Committee, and most recently, the Death and Critical Injury Review system that will be established in British Columbia under the recently passed *Representative for Children and Youth Act*.<sup>10</sup> Death reviews relating to children and youth who are within the Advocate's client group at the time of death should be explicitly included in the legislated mandate of the Office of the Child and Youth Advocate.

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10. S.B.C. 2006, c. 29.

**The Fundamental Recommendation: Political Leadership**

Child advocacy renewal in Ontario can only succeed with the support of Ontario's political leadership. First, child advocacy renewal requires a minister to take leadership, acting as a champion for the project at the Cabinet table and steering it through the legislative process. Second, it requires the premier to signal his support for child advocacy renewal and make it a priority for his government. Third, it requires the leaders of all parties in the Legislature to work in a non-partisan and cooperative spirit, to ensure that legislation to establish a new Office of the Child and Youth Advocate creates the best possible officer for the Legislature, and the best possible advocate for children and youth in the care of the government. All-party cooperation will be particularly important given the limited amount of time remaining in the present term of this government: any significant delays could effectively kill the bill by making it impossible to pass the legislation before the October 2007 election. Our party leaders must work together to prevent any such delays.

Ontario's political leaders can begin to take positive leadership immediately by pledging their support for child advocacy renewal. And, they can continue to take leadership by delivering that support as the required legislation moves through the legislative process. Children and youth in Ontario have waited long enough for an Advocate with appropriate powers and independence. It is time for our political leaders to deliver.



Defence for Children International (DCI) is an independent, grassroots organization, founded in Geneva, Switzerland in 1979. Its mission is to promote and protect the rights of the child through international action.

DCI played a significant role in the creation and the ratification of the United Nations Convention on the Rights of the Child, which was adopted November 20, 1989. DCI has consultative status with the Economic and Social Council of the United Nations, UNICEF, UNESCO and the Council of Europe.

The Canadian Section of DCI was recognized as part of the Defence for Children International movement in June 1989 and incorporated in Canada as a non-profit organization and registered charity in 1990.

DCI-Canada monitors governments' compliance with the Convention on the Rights of the Child both in Canada and around the world. We also promote the full implementation of the Convention through research, advocacy, development and youth participation projects.



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Child rights matter.

