

Page 1/8

Submission to the Statutory Review of the *Representative for Children and Youth Act*

February 11, 2017

British Columbia Civil Liberties Association
900 Helmcken St. second floor
Vancouver, BC V6Z 1B3
laura@bccla.org
604-630-9928

BCCLA Submission to the Statutory Review of the *Representative for Children and Youth Act*

Thank-you for the opportunity to make a submission on this review. The British Columbia Civil Liberties Association (BCCLA) is the oldest and most active civil liberties organization in Canada. We have spent over fifty years working to preserve, defend, maintain and extend civil liberties and human rights in British Columbia and across Canada.

Page 2/8

The BCCLA has extensive and longstanding involvement in issues affecting children's rights. In 2010, for example, the BCCLA and Justice for Girls uncovered the use of invasive sexualized testing research practices by the BC government's Youth Forensic Psychiatric Service. Our organizations complained to the Representative for Children and Youth and the practice was suspended. The BCCLA has also spoken out in defence of the rights of female youth prisoners facing incarceration hundreds of kilometres away from their families as a result of the centralization of girls' imprisonment, and in support of the Alouette Correctional Centre's mother-baby program, intervening in the BC Supreme Court challenge that successfully fought the closure of the program. Most recently, the BCCLA undertook a province-wide research project in an effort to understand the impacts of food insecurity on BC children, and published a report analyzing the protection of children's right to food under the *Canadian Charter of Rights and Freedoms*.

We are pleased to add our strong support for the critical work done by the Office of the Representative for Children and Youth (RCY). We encourage the Standing Committee to maintain the advocacy, oversight, investigation and review mandate of the RCY's Office. We also encourage the Standing Committee to decline to make any changes to provincial privacy protections that would undermine the safety and ability of vulnerable children, youth and families to participate in investigations and reviews of the handling of their cases.

Oversight Mandate

As you know, the RCY's mandate is set out in s. 6 of the *Representative for Children and Youth Act (RCY Act)* and has three aspects: to advocate for children; to monitor, audit and make recommendations on the effectiveness and responsiveness of government services for children; and to investigate and report on critical injuries and deaths of children. The mandate and functions of the RCY Office, as well as the Office's independence, are inextricably linked to fostering public confidence in the functioning of BC's child welfare system.

Page 3/8

In his wide-ranging review of BC's child protection system, former provincial bureaucrat Bob Plecas recommended that the RCY's independent oversight function should be taken over by the "quality assurance functions" of the Ministry for Children and Families (MCFD) itself, and that the Representative's role should be strictly one of advocacy.¹ He further expressed his belief that "within about 18 months, the Ministry can have a fully operational public information system to provide transparent, trusted public information."²

It is not clear what information or evidence Mr. Plecas was relying on to support this belief. As numerous Indigenous leaders pointed out after the report's publication, the report and its sweeping recommendations for reform of the child welfare system were prepared without any engagement or consultation with First Nations, despite the fact that Indigenous children comprise the majority of children in care and would be disproportionately impacted by the proposed reforms.³ Delegated Aboriginal Agencies, who were also not engaged in the preparation of the Plecas report, also expressed their

¹ "Plecas Review, Part One: Decision Time" (4 December 2015) at 44. [Plecas Report]

² *Ibid.*

³ Representative for Children and Youth, "Implementation of the Plecas Review: Part One: Decision Time" (April 2016) at 7-9.

dismay. This failure to consult with Indigenous groups is contrary to the Truth and Reconciliation Commission's Calls to Action, which call on all levels of government to develop culturally appropriate child welfare policies and practices, in consultation with Indigenous communities. Nor was then-Representative Mary Ellen Turpel Lafond consulted regarding the significant reforms proposed to the mandate of her office. When she challenged the veracity of several of Mr. Plecas's statements regarding her office and its relationship with the Ministry, which he had used to justify his recommendation to reform her office's mandate, her concerns went unaddressed in the final report.⁴ Given the woefully inadequate participation of critical stakeholders and the lack of input from the very body at issue and groups most likely to be affected by any changes, the factual foundation for the recommendations have questionable legitimacy. The recommendation to remove the RCY's independent oversight function on the basis of such an inadequate foundation simply cannot be seen as credible.

The RCY's independent oversight function is vital to the protection of children and youth and to the accountability, transparency, and resulting public trust in the Ministry's operations. Thanks to the tireless work of the RCY's Office, British Columbians have the benefit of critical information about serious issues affecting vulnerable children, and particularly Indigenous children in this province, including sexualized violence against girls in care, lack of critical supports for youth transitioning out of government care, the need for improved addiction and mental health services for youth, and countless other issues the RCY has investigated.

Independent oversight of BC's child welfare system, as provided by the RCY Office for the past decade, remains a necessity. Without it, significant problems in BC's child protection system would be at risk of flying under the radar and remaining unaddressed. The BCCLA urges

⁴ Ibid at 25-29.

the Standing Committee to maintain the monitoring and oversight portion of the RCY's mandate, as set out in s. 6 of the *RCY Act*, along with the advocacy and critical incident review portions of the mandate.

Privacy Protections for Vulnerable Youth

The Plecas report also contains a suggestion that legislation should be enacted to relax privacy protections for children and families so that individual cases may be more fully debated in the Legislature. The report recommends:

Page 5/8

Consideration should be given to changing legislation to allow confidential background briefings to Opposition members on specific cases. Then debates in the Legislature could gravitate to a higher level, and be based on facts.

...

In the future, the Chair of the Standing Committee and a designated person from the Opposition should have the authority to request, within seven days of a high profile case becoming public, or at the initiation of the Minister, an opportunity for a confidential briefing which could include the Representative. Establishing the framework for a process of this kind may require a legislative change.

The expectation would be that the Minister and staff could disclose sensitive personal information about a victim, for example, that would help to explain what went wrong in the care plan and safety program for this

child or youth, even if an investigation, for example, is not complete.⁵

In making this recommendation, Mr. Plecas pointed to rules governing the US Congress that permit confidential background briefings on national security issues as an example of when such briefings may assist in informing legislative debate. He encouraged members of the Legislative Committee to travel to Washington DC and observe their system of background briefings in action, and report to the Legislature on how this process may be adapted to BC.

Page 6/8

The Plecas report does not clearly explain the nature problem this recommendation is attempting to address. Mr. Plecas suggests that the proposed changes will help counter a “culture of blame” on the part of the media, public, and Opposition when a death or serious injury occurs to a child in care. He states:

There is nothing more damaging for any Minister, in whatever party, to be unable to respond to questions when the reason is restrictive confidentiality legislation. The Opposition is left with embarrassing the Minister for not being forthright and arguing that she should resign. Much of this is based on news reports and anecdotal information. ... The reports and media stories of tragic events that fuel Question Period demands for resignations are enjoyed much more in Opposition, whatever the party, than when they form government.⁶

The BCCLA is strongly opposed to any legislative enactment or policy change that would expose vulnerable children and families to public scrutiny of intimate and personal details of their lives. Nor should children and families’ private information become fodder for public

⁵ Plecas Report at 46-47.

⁶ Ibid at 46.

legislative debate. We reiterate the concerns we raised above about the lack of public consultation informing such a sweeping recommendation with potentially significant ramifications for vulnerable children, youth and families. In particular, the failure to consult with Indigenous organizations and service-providers in the context of the deplorable history of state intrusion in the lives of Indigenous families and communities seriously undermines the credibility of any resulting recommendation impacting on privacy.

Page 7/8

Maintenance of children and families' privacy helps to protect their ability to participate meaningfully in a review of the circumstances of their case. Individuals' ability to disclose pertinent information and share sensitive details about their lives and personal struggles would be seriously undermined by the knowledge that this information could be subject to broader disclosure and discussion in the Legislature. The analogy to the US Congress is not apt given the unique circumstances of vulnerable children and youth and the particular challenges they face.

It is unclear what exactly the problem is that this recommendation purports to address. The report cites no complaints from any member of the Legislature about a lack of access to critical information. Generalized concerns about rancorous and unproductive debate in the Legislature and the impact of this on the Minister responsible simply cannot justify infringing critical privacy protections.

It may be possible that existing privacy legislation is being misunderstood or misapplied. If there is in fact a problem that is stifling productive work in the Legislature and needs to be addressed, the appropriate action, in our submission, is to consult with the Office of the Information and Privacy Commission (OIPC) to ensure the legislation is being properly construed and applied. If necessary, the OIPC's office could be asked to produce a guidance document and, if any genuine impediments to appropriate deliberations do exist, to offer

its guidance and expertise in developing a solution. In the meantime, we urge you to maintain robust privacy protections for children and families involved in the child welfare system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Track', is centered below the text 'Respectfully submitted,'.

Page 8/8

Laura Track
Counsel
BC Civil Liberties Association