



STANDING COMMITTEE ON LEGISLATIVE OFFICES

Understanding the Child and Youth Advocate Act

DISCUSSION GUIDE



THE STANDING COMMITTEE ON LEGISLATIVE OFFICES

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WHAT IS BEING DISCUSSED?

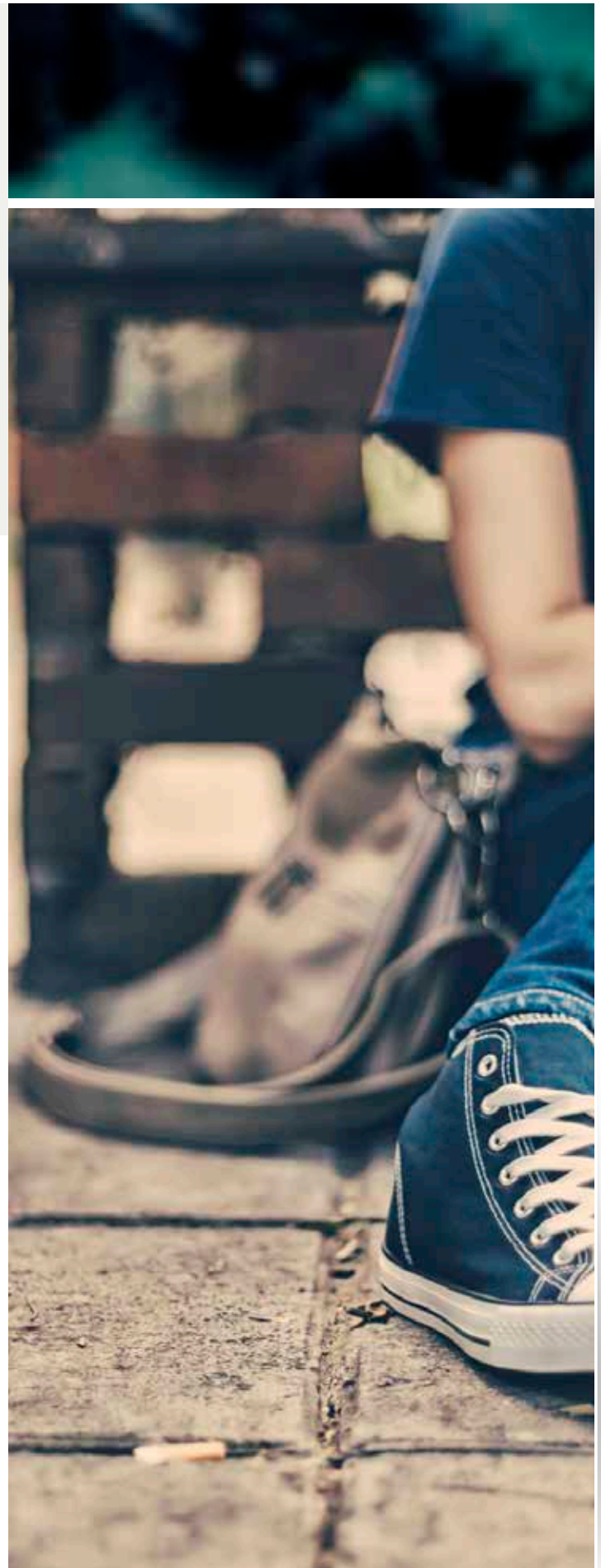
The Standing Committee on Legislative Offices (the Committee) invites you to provide input into its review of the *Child and Youth Advocate Act*, S.A. 2011, c. C-11.5 (the Act). The duties and functions of the *Child and Youth Advocate Act* are carried out by the Office of the Child and Youth Advocate. The purpose of this review is to seek out areas of improvement with regard to the legislation that governs the Office of the Child and Youth Advocate.

On June 2, 2016, the Legislative Assembly of Alberta assigned the review of the *Child and Youth Advocate Act* to the Standing Committee on Legislative Offices in accordance with section 23 of the Act, which says that a committee of the Legislative Assembly must begin a comprehensive review of this Act by July 1, 2016. As part of its review process the Committee is seeking your input.

The role of Alberta's Child and Youth Advocate is set out in the *Child and Youth Advocate Act*. The *Child and Youth Advocate Act* was created to ensure that the rights, interests and viewpoints of the most vulnerable children and youth in provincial government systems are considered in matters that affect them.

This discussion guide is intended to help you consider the *Child and Youth Advocate Act* and its implications.

If you wish to comment on the *Child and Youth Advocate Act*, the Standing Committee on Legislative Offices will consider your submission.





HOW CAN YOU PROVIDE FEEDBACK TO THE COMMITTEE?

If you have thoughts on the *Child and Youth Advocate Act*, the Committee would like to hear from you. There are three ways to provide input to the Committee.

1. Online

You can quickly and easily provide your feedback through the Committee's online submission form at assembly.ab.ca/committees/legislativeoffices

2. E-mail

If you would like to send a written submission as an attachment, e-mail CYAARevue@assembly.ab.ca

3. Mail

You can also mail your submission to:
Standing Committee on Legislative Offices
c/o Committee Clerk
3rd Floor, 9820 – 107 Street
Edmonton, AB T5K 1E7

4. Fax

Fax your submission to 780.644.8621

Please note: The names of members of the public and any third-party personal information that is included in the submission will be redacted before the submission is posted to the Committee's website.

Submissions from members of the public will be kept confidential upon request.

All submissions must be received by **October 14, 2016**.

WHAT SHOULD YOU CONSIDER IN YOUR SUBMISSION?

The Standing Committee on Legislative Offices requests your answers to the following questions.

Please read the relevant section of the discussion guide (which follows) for background information about each question.

1. There are services provided to different age groups under the Act. Are these age limits appropriate?
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.
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.
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?
5. Is the information provided by a child to an advocate sufficiently protected? Is the information provided for an investigation sufficiently protected?
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.
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.
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.



WHAT IS THE OFFICE OF THE CHILD AND YOUTH ADVOCATE (OCYA)?

The Office of the Child and Youth Advocate (OCYA) represents the rights, interests and viewpoints of Alberta's most vulnerable children and youth. The OCYA provides individual and systemic advocacy for children and youth receiving child intervention (child welfare services) and services under the *Protection of Sexually Exploited Children Act* (PSECA) or children who are involved in the youth justice system. In addition, the OCYA provides legal representation for young people in child intervention and PSECA matters, investigates systemic issues arising from a serious injury to or death of a child receiving designated services (excluding adoptions) and delivers public education.

The OCYA focuses on

- Advocating on behalf of individual children and youth receiving designated services by ensuring that their rights, interests and viewpoints are acknowledged and acted upon
- Identifying issues and making recommendations to improve designated services for young people
- Conducting investigations into systemic issues arising from the serious injury to or death of a child or youth receiving designated services at the time of the incident or within two years of receiving child intervention services
- Providing legal services to children and youth receiving services under the *Child, Youth and Family Enhancement Act* or the *Protection of Sexually Exploited Children Act*
- Providing public education on the rights, interests and well-being of children and youth
- Conducting research related to improving designated services and
- Reporting to Alberta's Legislature on any matter related to the rights, interests and well-being of children involved with designated services



WHAT DOES THE *CHILD AND YOUTH ADVOCATE ACT* SAY?

The *Child and Youth Advocate Act* sets out what the Office of the Child and Youth Advocate is permitted to do. The Act creates the role, administration and operation of the Office of the Child and Youth Advocate.

The Child and Youth Advocate reports to the Assembly as an Officer of the Legislature pursuant to the *Child and Youth Advocate Act*.


The Act has four parts, as follows.

Part 1 sets out the process for appointing the Child and Youth Advocate, defines the terms of the office and establishes the Office of the Child and Youth Advocate as a part of the public service of Alberta.

Part 2 refers to the Advocate's role, functions and general powers, including the powers the Advocate may delegate to others, the Advocate's right to have access to government information and the powers relating to investigations and information that must be included in reports after investigations.

Part 3 includes administrative and general provisions, establishing, for example, that the Advocate is not compellable as a witness and that all information provided by a child to the Advocate in confidence is privileged information and not admissible in evidence in any action without the consent of the child.

Part 4 establishes when the Act comes into force. The *Child and Youth Advocate Act* was proclaimed in force on April 1, 2012.



WHAT ARE THE AGE LIMITS OF THOSE WHO RECEIVE SERVICES UNDER THE ACT?

There are various age limits in which the Advocate can provide services to a child or youth depending upon the government service the child or youth is receiving and the service they require from the Advocate.

Individual advocacy — under 24 years for youth receiving support and financial care; otherwise, 18 years for other child intervention services. Up to age 27 years for youth in youth justice custody; otherwise, 18 years for other youth justice involvement.

Legal representation — up to 18 years.

Investigative reviews — up to 26 years for youth who received support and financial care up to age 24 years and their death was within two years of receiving this service; otherwise, up to 24 years for youth with intervention involvement. Up to age 27 for youth in youth justice custody.

The *Child and Youth Advocate Act* defines “child” as

- (i) a person under the age of 18 years, including a youth, who is receiving or is seeking to receive a designated service, or
- (ii) a person under the age of 22 years who is receiving support and financial assistance under section 57.3 of the *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 (s. 1(c)).

“Youth” means a child who is 16 years of age or older.

Section 9(4) provides an exception to the definition of “child” by stating that the Advocate cannot appoint a lawyer for a young person who is receiving assistance under section 57.3 of the *Child, Youth and Family Enhancement Act*.

1. Are these age limits appropriate?



DOES THE ACT PERMIT THE OCYA TO PROVIDE APPROPRIATE SERVICES TO CHILDREN AND YOUTH?

The *Child and Youth Advocate Act* defines “designated service” as

- (i) a service under the *Child, Youth and Family Enhancement Act*, other than an adoption service (under Part 2 of that Act),
- (ii) a service under the *Protection of Sexually Exploited Children Act* (PSECA), or
- (iii) a service provided to children in the youth criminal justice system (s. 1(e)).

This means the Office of the Child and Youth Advocate provides individual advocacy to children and youth receiving child intervention and PSECA and youth justice services. The OCYA provides legal representation to children and youth for child intervention and PSECA matters.

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 other government services?



WHAT DOES THE ACT PERMIT THE ADVOCATE TO DO?

The *Child and Youth Advocate Act* creates the role, function and general powers of the Advocate.

Section 9(1) states that the role of the Advocate and his office is to represent the rights, interests and viewpoints of children. Section 9(2) enables the Advocate and his office to do their work. The exact wording of section 9(2) is as follows.

In carrying out the role of the Advocate under subsection (1), the Advocate may

- (a) communicate and visit with a child, or with a guardian or other person who represents a child;
- (b) on the Advocate's own initiative, or at the request of a child, assist in appealing or reviewing a decision relating to a designated service*;
- (c) appoint, or cause to be appointed, lawyers to represent children with respect to any matter or proceeding under the *Child, Youth and Family Enhancement Act* or the *Protection of Sexually Exploited Children Act* or any matter or proceeding prescribed by regulation†;
- (d) if, in the opinion of the Advocate, the investigation is warranted or in the public interest, investigate systemic issues arising from
 - (i) a serious injury to a child who at the time of the injury was receiving a designated service under the *Child, Youth and Family Enhancement Act*, other than an adoptive service,
 - (ii) a serious injury to or the death of a child who at the time of the injury or death was receiving a designated service under the *Protection of Sexually Exploited Children Act* or a service provided to children in the youth criminal justice system ‡,
 - (iii) the death of a child who at the time of the death was receiving a designated service under the *Child, Youth and Family Enhancement Act*, other than an adoptive service, or
 - (iv) the death of a child who at any time during the 2-year period immediately preceding the death received a designated service under the *Child, Youth and Family Enhancement Act*, other than an adoptive service;

* Section 9(3) provides that "[s]ubsection (2)(b) does not apply in respect of a designated service referred to in section 1(e)(iii)" of the Act — that is a designated service provided to youth in the criminal justice system.

† Section 9(4) provides that "[s]ubsection (2)(c) does not apply in respect of a child referred to in section 1(c)(ii)" — that is a person under 22 years of age who is receiving support and financial assistance under section 57.3 of the *Child, Youth and Family Enhancement Act*.

‡ Section 9(5) provides that "[s]ubsection (2)(d)(ii) does not apply in respect of a designated service referred to in section 1(e)(iii)" — that is youth in the criminal justice system — "unless, at the time of the serious injury or death of the child, the child was in open or secure custody."



- (e) participate in processes in which decisions are made about children;
- (f) promote the rights, interests and well-being of children through public education;
- (g) undertake or collaborate in research related to improving designated services or addressing the needs of children receiving those services;
- (h) provide information and advice to the Government with respect to any matter relating to the rights, interests and well-being of children;
- (i) perform any other function prescribed in the regulations.*

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 discuss your answer and provide suggestions, if possible.

* There are currently no other functions prescribed in the regulations.



WHAT POWERS DOES THE ADVOCATE HAVE?



The powers of the Child and Youth Advocate are set out in the Act as follows.

Section 8(1): may set up the Office of the Child and Youth Advocate.

Section 10: may delegate to others most of the powers, duties and functions of the Advocate under the Act.

Section 13: has broad access to government information that may be used for advocacy and investigations.

Section 14: has specific powers relating to investigation, including the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

4. Does the Act provide the Advocate with sufficient powers to conduct the roles and functions as stated in the Act? Are other powers necessary?



HOW DOES THE ACT PROTECT INFORMATION THAT IS PROVIDED BY A CHILD?

The Act protects information that is provided by a child or by someone during an investigation.

Section 18: all information provided during an investigation is privileged (kept confidential).

Section 20: information provided by a child to the Advocate in confidence is privileged. An advocate must not be compelled to give evidence in a legal action.

5. Is the information provided by a child to an advocate sufficiently protected? Is the information provided for an investigation sufficiently protected?



HOW DOES THE ADVOCATE HANDLE INVESTIGATIONS?

The circumstances in which the Advocate can begin an investigation are set out in the Act.

As discussed above, section 9(2)(d) of the Act enables the Advocate to launch an investigation. If, in the opinion of the Advocate, an investigation is warranted or in the public interest, the Advocate may investigate systemic issues arising from

- a serious injury to or the death of a child who at the time of the injury or death was receiving a designated service,*
- the death of a child who at the time of the death was receiving a designated service, or
- the death of a child who at any time during the 2-year period immediately preceding the death received a designated service (s. 9(2)(d)).

Powers Relating to Investigations

The Act sets the powers of the Advocate when conducting an investigation. During an investigation the Advocate has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*, R.S.A. 2000, c. P-39 (s. 14). This includes the ability to engage the services of experts to assist in an investigation and the ability to summon any person as a witness and require them to give evidence under oath about the matter being investigated.

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? Do you agree with how the Act enables the Advocate to conduct investigations? Please discuss your answer and provide suggestions.

* Section 9(5) of the CYAA provides that “[s]ubsection (2)(d)(ii) does not apply in respect of a designated service referred to in section 1(e)(iii)” — that is youth in the criminal justice system — “unless, at the time of the serious injury or death of the child, the child was in open or secure custody.”



WHAT HAPPENS AFTER AN INVESTIGATION?

The Act sets out the process of reporting following the completion of an investigation.

After completing an investigation, the Advocate must make a report containing recommendations for any public body or other person the Advocate considers appropriate. The report may also address any other matters the Advocate considers appropriate (ss. 15(1)(a) and (b)).

The report cannot contain any findings of legal responsibility or any conclusions of law (s. 15(2)).

A report must not disclose the name of or any identifying information about the child to whom the investigation relates or a parent or guardian of the child (s. 15(3)).

The Advocate must provide a copy of the report to the public body that is directly or indirectly the subject of investigation and to the public (ss. 15(4) and (5)).

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 discuss your answer and provide suggestions.



DO YOU HAVE OTHER COMMENTS?

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.



ADDITIONAL INFORMATION

The Office of the Child and Youth Advocate provides advocacy for young people who are receiving (or want to receive) child intervention services or who are involved with the youth criminal justice system. If you are a young person and have questions about your rights, need legal help, or need to speak out, you can call toll-free at 800.661.3446 or e-mail ca.information@OCYA.alberta.ca.

Individuals and organizations seeking more information about the Office of the Child and Youth Advocate can visit ocya.alberta.ca.