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1st SESSION, 66th GENERAL ASSEMBLY  
Province of Prince Edward Island  
68 ELIZABETH II, 2019

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**CHAPTER 21**  
(Bill No. 30)

**Child and Youth Advocate Act**

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Hon. Dennis King  
Premier

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GOVERNMENT BILL

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Carol Mayne  
Acting Queen's Printer  
Charlottetown, Prince Edward Island





CHAPTER 21

**CHILD AND YOUTH ADVOCATE ACT**

*(Assented to November 28, 2019)*

WHEREAS the Government of Prince Edward Island acknowledges that the aim of the *Child and Youth Advocate Act* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child as ratified by the Government of Canada;

AND WHEREAS the Government of Prince Edward Island acknowledges that formative childhood experiences have long-term implications for the individual and for society;

AND WHEREAS the Government of Prince Edward Island acknowledges that children and youth are able to reach their highest potential when provided with positive life experiences that encourage healthy development and early support when facing challenges;

AND WHEREAS the Government of Prince Edward Island recognizes the importance of continual improvement in the provision of programs and services to children and youth through a collaborative approach that is inclusive of the views of children and youth;

AND WHEREAS the Government of Prince Edward Island recognizes the importance of the preservation and promotion of cultural identity for Indigenous children and youth;

AND WHEREAS the Government of Prince Edward Island is committed to ensuring that the rights, interests and viewpoints of children and youth are considered in matters affecting them;

THEREFORE, BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

**PART 1 - DEFINITIONS**

**1. Definitions**

In this Act,

- (a) “**Advocate**” means the Child and Youth Advocate appointed under section 2;
- (b) “**band**” means a band within the meaning of the *Indian Act* (Canada);

- (c) “**child**” means
  - (i) a person who is under 18 years of age, or
  - (ii) a person under 21 years of age who is receiving a service under section 46 of the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1;
- (d) “**community organization**” means a community organization or other body that delivers a reviewable service for children, youth and their families pursuant to a contract or agreement with Government;
- (e) “**designated representative**” means a designated representative as defined in the *Child Protection Act*;
- (f) “**Government**” means the Government of Prince Edward Island;
- (g) “**legal counsel**” means a person who is a practising member of the Law Society of Prince Edward Island pursuant to the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1, or a visiting lawyer authorized to practise law in this province in accordance with the regulations under that Act;
- (h) “**Office**” means the Office of the Child and Youth Advocate established under section 7;
- (i) “**personal health information**” means personal health information as defined in clause 1(t) of the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41;
- (j) “**personal information**” means personal information as defined in clause 1(i) of the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01;
- (k) “**public body**” means a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and includes a police service as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1, but does not include the Executive Council Office or the office of an officer of the Legislative Assembly;
- (l) “**reviewable service**” means a program or service funded by Government and provided to a child or youth or the family of a child or youth by or on behalf of a public body, including but not limited to
  - (i) child protection programs and services pursuant to the *Child Protection Act*,
  - (ii) adoption programs and services pursuant to the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1,
  - (iii) social assistance programs and services pursuant to the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3,
  - (iv) early childhood development and child care programs and services pursuant to the *Early Learning and Child Care Act* R.S.P.E.I. 1988, Cap. E-.01,
  - (v) educational programs and services pursuant to the *Education Act* R.S.P.E.I. 1988, Cap. E-.02, the *Early Learning and Child Care Act* or the *Private Schools Act* R.S.P.E.I. 1988, Cap. P-20.01,
  - (vi) mental health and addiction programs or services and health programs and services pursuant to the *Health Services Act* R.S.P.E.I. 1988, Cap. H-1.6,
  - (vii) programs and services provided or administered by the Department of Justice and Public Safety pursuant to the *Youth Criminal Justice Act* (Canada), the *Divorce Act* (Canada), the *Police Act*, the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, the *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33, section 40 of the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1 or the *Victims of Family Violence Act* R.S.P.E.I. 1988, Cap. V-3.2, and
  - (viii) a program or service specified in the regulations;



- (m) “**serious injury**” means an injury that
  - (i) may result in the death of a child or youth, or
  - (ii) may cause serious or long-term impairment to the mental or physical health of a child or youth;
- (n) “**youth**” means a person over the age of 12 years and under the age of 18 years.

## PART 2 - CHILD AND YOUTH ADVOCATE

### 2. Child and Youth Advocate

- (1) There shall be a Child and Youth Advocate, who is an officer of the Legislative Assembly, for the province.

#### Appointment

- (2) The Advocate shall be appointed by the Legislative Assembly
  - (a) on the recommendation of the Standing Committee on Legislative Management; and
  - (b) following a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

#### Member not eligible

- (3) The Advocate shall not
  - (a) be a member of the Legislative Assembly; or
  - (b) hold any other public office or employment during the Advocate’s term of office.

#### Term of office

- (4) Except as provided for in this section, the Advocate holds office for a term of five years and may be reappointed for a single further term of five years.

#### Holdover

- (5) Despite subsection (4), the Advocate continues to hold office after the Advocate’s term of office expires until a successor is appointed or a period of six months has expired, whichever occurs first.

### 3. Deputy Advocate

- (1) The Advocate may in writing appoint a Deputy Advocate
  - (a) to assist the Advocate in carrying out the duties and functions of the Advocate under this Act; and
  - (b) to act in place of the Advocate where the Advocate is suspended, the office is vacant or the Advocate is temporarily absent because of illness or another reason.

#### Limitation on authority to act

- (2) The authority of the Deputy Advocate to act under clause (1)(b) ends when the first of any of the following occurs:
  - (a) the suspension of the Advocate ends;
  - (b) a person is appointed as Advocate under subsection 2(2);
  - (c) the Advocate returns to office after the temporary absence.

**4. Evidence of appointment**

The Advocate and Deputy Advocate shall produce evidence of the person's appointment and authority under this Act when requested to do so.

**5. Remuneration**

The Advocate shall

- (a) be paid, out of the Operating Fund, compensation equal to the compensation paid to the Auditor General; and
- (b) be reimbursed for reasonable travelling and out-of-pocket expenses personally incurred in exercising the powers and performing the functions and duties of the office.

**6. Resignation**

- (1) The Advocate may resign at any time by giving written notice
  - (a) to the Speaker of the Legislative Assembly; or
  - (b) if there is no Speaker or the Speaker is absent from the province, to the Clerk of the Legislative Assembly.

**Suspension or removal**

- (2) The Legislative Assembly may, by a resolution passed by two-thirds of the members present, suspend or remove the Advocate from office for cause or incapacity.

**Where Legislative Assembly not sitting**

- (3) Where the Legislative Assembly is not sitting and is not scheduled to sit within five days, the Legislative Management Committee may, by unanimous resolution, suspend the Advocate for cause or incapacity, with or without salary, for a period to be set by the Committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

**7. Office of Child and Youth Advocate**

- (1) There is hereby established an office called the Office of the Child and Youth Advocate consisting of the Advocate, the Deputy Advocate and the persons that are necessary to assist the Advocate in carrying out the Advocate's functions under this Act.

**Services**

- (2) The Advocate may engage the services of any persons the Advocate considers necessary or advisable to assist the Advocate in carrying out the Advocate's functions.

**Application of Civil Service Superannuation Act**

- (3) The Advocate, the Deputy Advocate and the employees of the Office appointed under this section are employees for the purposes of the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9, and are entitled to benefits in accordance with the provisions of that Act.

**Transfer of employees from civil service**

- (4) On the coming into force of this section, all persons who, immediately before this section comes into force,
  - (a) are employees in the classified division of the civil service; and

- (b) hold appointments, pursuant to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8, as officers or employees of the Office for Children and Youth, cease to be employees in the classified division of the civil service and are hereby transferred, without compensation, to the Office.

**Transfer of positions**

- (5) On the coming into force of this section, all of the positions within the classified division of the civil service of the persons who are transferred under subsection (4) are transferred to, and become part of the establishment of, the Office.

**Position continues**

- (6) On the coming into force of this section, a person who is transferred from the classified division of the civil service to the Office under subsection (4) is deemed to hold within the Office the position that the person held within the Office for Children and Youth immediately before the person's transfer under this section.

**No break in service**

- (7) The transfer of a person from the classified division of the civil service to the Office under this section is deemed to occur without effecting a break in the service of that person.

**Continuation of terms and conditions of employment**

- (8) All of the terms and conditions of employment of a person who is transferred from the classified division of the civil service to the Office under this section, whether set by collective agreement, contract of employment, statute, regulation, policy or other means, shall continue in force as they were immediately prior to the coming into force of this section until changed under this Act or otherwise.

**No severance pay**

- (9) For greater certainty, nothing in this section shall be construed as entitling any person to severance pay as a result of the transfer of that person from the classified division of the civil service to the Office.

**8. Submission of estimate**

- (1) The Advocate shall submit to the Legislative Management Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislative Assembly to defray the several charges and expenses of the Office in that fiscal year.

**Financing of operations**

- (2) The Legislative Management Committee shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee shall transmit the estimate to the Minister of Finance for presentation to the Legislative Assembly.

**9. Oath of office - Advocate**

- (1) Before beginning the duties and functions of office, the Advocate shall take an oath or make a solemn affirmation to faithfully and impartially perform the duties and functions of the Office and not to disclose any information received by the Advocate under this Act except as provided in this Act.

**Administration of oath or affirmation**

- (2) The oath or solemn affirmation referred to in subsection (1) shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

**Oath of office - Deputy, employees**

- (3) The Deputy Advocate and every person appointed, employed or engaged under section 7 shall, before beginning to perform the person's duties under this Act, take an oath or make a solemn affirmation, to be administered by the Advocate, not to disclose any information received by that person under this Act except as provided in this Act.

## PART 3 - RIGHT TO COMMUNICATE

### 10. Right to communicate with Advocate

Every child or youth who is receiving or is eligible to receive a reviewable service has a right to communicate with the Advocate privately and in confidence.

### 11. Child or youth in facility

- (1) In this section, “**facility**” means a facility, foster home, group home or other home or place in which a child or youth is placed pursuant to an Act that authorizes a reviewable service to children or youth, and includes a facility where mental health or addiction programs or services are provided to children and youth, a youth custody facility as defined in the *Youth Criminal Justice Act* (Canada) and a hospital as defined in the *Hospitals Act* R.S.P.E.I. 1988, Cap. H-10.1.

**Request to be forwarded**

- (2) Where a child or youth in a facility asks to communicate with the Advocate, that request shall be forwarded immediately to the Advocate by the person in charge of the facility.

**Letter to be forwarded**

- (3) Where a child or youth, or someone on behalf of a child or youth, writes a letter addressed to the Advocate, the person in charge of the facility shall forward the letter immediately, unopened, to the Advocate.

**Duty of person in charge of facility**

- (4) Every person in charge of a facility shall
- (a) ensure that means are provided at the facility to permit each child or youth placed there to communicate in private with the Advocate orally, electronically or by another method; and
  - (b) inform each child and youth placed in the facility of
    - (i) the child's or youth's right to communicate in private with the Advocate,
    - (ii) the services provided by the Advocate, and
    - (iii) how to communicate with the Advocate, including the Advocate's contact information.





**Access to child or youth in facility**

- (5) Where, for the purpose of carrying out a responsibility of the Advocate under this Act, the Advocate requests access to a facility where a child or youth receives a reviewable service, the owner or person in charge of the facility shall provide access as soon as it is safe to do so.

**PART 4 - ADVOCATE'S ROLE AND RESPONSIBILITIES**

**12. Role and responsibilities of Advocate**

- (1) The Advocate is responsible for
- (a) advocating for children, youth and their families respecting reviewable services, including but not limited to
    - (i) providing information and advice to children, youth and their families,
    - (ii) representing the rights, interests and viewpoints of children and youth who are receiving or eligible to receive reviewable services, and
    - (iii) assisting children and youth to initiate and participate in case conferences, service reviews, mediations or other processes in which decisions are made about the provision of reviewable services;
  - (b) receiving and reviewing any matter in relation to a reviewable service provided to a child or youth or a group of children or youth;
  - (c) promoting and providing public education and advocacy respecting the rights, interests and well-being of children and youth, the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples as it affects children and youth;
  - (d) monitoring implementation of and compliance with recommendations included in reports made under this Act;
  - (e) promoting the rights of children and youth in relation to Government legislation, policies, protocols, practices and reviewable services to children and youth;
  - (f) working with individuals, families, communities, public bodies and community organizations to support and create opportunities for the well-being of children and youth; and
  - (g) undertaking or collaborating in research related to improving reviewable services.

**Authority of Advocate**

- (2) The Advocate may,
- (a) subject to subsections 22(6) and (7), receive and investigate any matter that comes to the Advocate's attention from any source concerning
    - (i) a child or youth who receives or is eligible to receive a reviewable service,
    - (ii) a group of children or youths who receive or are eligible to receive a reviewable service, and
    - (iii) a reviewable service for children or youth;
  - (b) on the Advocate's own initiative, or at the request of a child or youth, assist in appealing or reviewing a decision relating to a reviewable service;
  - (c) appoint, or cause to be appointed, legal counsel to represent a child or youth with respect to a matter or proceeding under the *Child Protection Act* or a matter or proceeding specified in the regulations;

- (d) advocate on behalf of a child or youth in relation to a reviewable service;
- (e) try to resolve those matters mentioned in clause (a), (b), (c) or (d) through the use of negotiation, conciliation, mediation or other non-adversarial approaches and, if appropriate, make recommendations to public bodies, community organizations or families;
- (f) review, investigate and report on the serious injury or death of a child or youth as set out in sections 21, 22 and 23;
- (g) conduct or contract for research respecting the rights, interests and well-being of children and youth for the purpose of making recommendations to improve the effectiveness and responsiveness of a reviewable service;
- (h) advise or make recommendations to any public body or community organization responsible for providing reviewable services to children and youth on any matter relating to the rights, interests and well-being of children and youth; and
- (i) perform any other function prescribed in the regulations.

**Jurisdiction of Advocate**

- (3) Despite subsections (1) and (2), the Advocate does not have jurisdiction over and shall not act under this Act with respect to
  - (a) judges, justices of the peace and functions of any court of the province; and
  - (b) the deliberations and proceedings of the Executive Council or any committee of it.

**Decisions, etc., not final**

- (4) The Advocate may exercise the powers of the Advocate's office in respect of a reviewable service despite a provision in another Act that states
  - (a) that a decision, recommendation, act or omission is final or shall not be appealed; or
  - (b) that a proceeding, decision, recommendation, act or omission of an authority or officer under that Act shall not be challenged, reviewed, quashed or called into question.

**Application to Court**

- (5) Where a question arises as to the jurisdiction of the Advocate to review or investigate a matter under this Act, the Advocate may apply to the Supreme Court for a declaratory order determining the question.

**Proceeding of Advocate final**

- (6) No proceeding of the Advocate is void for want of form and, except on the ground of lack of jurisdiction, no proceeding of the Advocate shall be challenged, reviewed, quashed or called into question in any court.

**Forms**

- (7) The Advocate may approve forms to be used for the purposes of this Act.

**13. Delegation by Advocate**

- (1) The Advocate may, in writing, delegate to any employee of the Office any of the Advocate's functions, powers and authority, other than
  - (a) the power of delegation pursuant to this section; and
  - (b) the power to make a report under this Act.

**Delegation to person or class of persons**

- (2) A delegation under this section may be made to a specified member of the Office, and may be made either generally or in relation to a particular person or class of persons.

**Delegation continues**

- (3) A delegation under this section continues in effect until it is revoked by the Advocate.

**Revocation of delegation**

- (4) The Advocate may revoke a delegation at any time.

**Advocate retains authority**

- (5) No delegation prevents the exercise of any power by the Advocate.

**Restrictions and conditions on delegation**

- (6) The Advocate may impose any restrictions or conditions that the Advocate considers appropriate on a delegation.

**Delegation continues**

- (7) If the Advocate who made a delegation ceases to hold office, the delegation continues in effect as if it were made by the successor in office until amended or revoked by the successor.

**Evidence of delegation**

- (8) If the Advocate has delegated a power under subsection (1), the person to whom the power is delegated shall produce evidence of that person's authority to exercise the power when requested to do so.

**14. No power to act as legal counsel**

The Advocate shall not act as legal counsel for or provide legal advice to any person.

## **PART 5 - INFORMATION AND CONFIDENTIALITY**

**15. Provision of information**

- (1) The Advocate may require a public body or community organization to provide any information in its custody or under its control, including personal information and personal health information, that the Advocate considers necessary to enable the Advocate to carry out responsibilities or exercise powers under this Act.

**Statutory limitations on right to information**

- (2) Despite subsection (1), the Advocate shall not require information respecting a matter under any of the following provisions:
- (a) an order for the placement or adoption of a child under section 47 of the *Adoption Act*;
  - (b) the identity of a person who makes a report under subsection 10(3) of the *Child Protection Act*;
  - (c) quality improvement information pursuant to section 30 of the *Health Services Act*;

- (d) a request by a person for a Children's Lawyer under subsection 33.1(16) of the *Judicature Act* or an inquiry by the Children's Lawyer resulting from that request under subsection 33.1(18) of the *Judicature Act*.

**Other limitations on right to information**

- (3) Despite subsection (1), the Advocate shall not require information that is subject to a legal privilege, including solicitor-client privilege, or the privilege respecting Cabinet confidentiality.

**Limitations on requesting, disclosing information**

- (4) The Advocate shall not request or disclose personal information or personal health information under this Act if, in the Advocate's opinion, other information will serve the purpose of the request or disclosure.

**Compliance required**

- (5) A public body or community organization that is required to provide information to the Advocate under subsection (1) shall provide the information to which the Advocate is entitled.

**16. Disclosure of information**

- (1) For any of the purposes stated in section 12, the Advocate may disclose personal information or personal health information to
- (a) a public body; or
  - (b) a community organization that has entered into an agreement under section 17.

**Other disclosures authorized by law**

- (2) Nothing in this section limits the authority of the Advocate to disclose personal information or personal health information where authorized or required to do so by law.

**This Act prevails**

- (3) The provisions of this Act respecting the collection, use and disclosure of personal information prevail notwithstanding the *Freedom of Information and Protection of Privacy Act*.

**17. Agreements**

- (1) The Advocate may enter into an agreement with the head of a public body or community organization for the purposes of exercising the Advocate's powers and performing the Advocate's functions and duties under this Act.

**Agreement shall protect information**

- (2) An agreement relating to disclosure of personal information or personal health information referred to in clause 16(1)(b) shall include provisions protecting that information from such risks as unauthorized access, use, disclosure or destruction.

**18. Confidentiality and privacy**

- (1) The Advocate, and anyone employed under or acting as a delegate of, or a contractor for, the Advocate, shall



- (a) maintain confidentiality about all matters that come to the person's knowledge in the course of the person's work under this Act; and
- (b) not disclose any information or record obtained by the Advocate except as required to carry out the person's responsibilities under this Act.

**Disclosure prohibited**

- (2) The Advocate, and anyone employed under or acting as a delegate of, or a contractor for, the Advocate, shall not disclose personal information, personal health information or potentially identifying information that may have come into the person's possession relating to
  - (a) the granting of an order of placement or adoption under the *Adoption Act*;
  - (b) the identity of a person who has made a report under section 10 of the *Child Protection Act*;
  - (c) the identity of a person who has made a request for a Children's Lawyer under subsection 33.1(16) of the *Judicature Act* or an inquiry by the Children's Lawyer resulting from that request under subsection 33.1(18) of the *Judicature Act*; or
  - (d) the identity of a person who has made a report to or a request for review by the Advocate.

**Disclosure to advocates and representatives for children and youth**

- (3) Subject to subsection (2), and section 19, the Advocate may disclose information relating to a child or youth to an advocate or representative for children and youth appointed under legislation substantially similar to this Act in another province or territory where the information is reasonably required by that advocate or representative to carry out responsibilities with respect to the child or youth.

**19. Limits on disclosure of information**

The Advocate, and anyone appointed by, employed under or acting as a delegate of, or a contractor for, the Advocate, shall ensure that any disclosure of personal information, personal health information or potentially identifying information

- (a) is reasonably required to accomplish the purpose for which the disclosure is made; and
- (b) is limited to the minimum amount of information necessary to accomplish that purpose.

**PART 6 - REPORTS AND INVESTIGATIONS OF SERIOUS INJURY OR DEATH**

**20. Duty to report**

When a child or youth is seriously injured or dies while receiving a reviewable service, the public body or community organization that provided the reviewable service shall report the serious injury or death to the Advocate as soon as practicable.

**21. Information to be provided**

- (1) Where a public body or community organization becomes aware of a serious injury or death of a child or youth who was receiving, or whose family was receiving, a reviewable service at the time of, or within two years previous to, the serious injury or death, the public body or community organization that provided the reviewable service shall provide information

respecting the serious injury or death to the Advocate as soon as practicable for the purposes of subsection (3).

**Report by any person**

- (2) Without limiting the obligation of a public body or community organization under subsection (1), a person who has knowledge of the serious injury or death of a child or youth shall report the matter to the Advocate.

**Review of information**

- (3) The Advocate may conduct a review of a report of a public body or community organization under subsection (1) or a report by a person under subsection (2) for the following purposes:
- (a) to determine whether to investigate a serious injury or death;
  - (b) to identify and analyze recurring circumstances or trends to improve the effectiveness and responsiveness of a reviewable service.

**Results of review**

- (4) If, after completion of a review under subsection (3), the Advocate decides not to conduct an investigation under subsection 22(1), the Advocate may disclose the results of the review to the public body or community organization that provided the reviewable service or to the person who made the report, as applicable.

**22. Investigations of injuries and deaths**

- (1) Subject to subsections (6) and (7), the Advocate may investigate the serious injury or death of a child or youth if, after the completion of a review of the serious injury or death of the child or youth under subsection 21(3), the Advocate determines that
- (a) the manner in which a reviewable service was provided may have contributed to the serious injury or death; and
  - (b) the serious injury or death occurred, in the opinion of the Advocate, in unusual or suspicious circumstances, or was, or may have been, self-inflicted or inflicted by another person.

**Notice**

- (2) Where the Advocate decides under subsection (1) to investigate the serious injury or death of a child or youth, the Advocate shall notify
- (a) the public body or community organization responsible for the provision of the service or for the policies or practices that may have contributed to the serious injury or death;
  - (b) any person who made a report respecting the serious injury or death; and
  - (c) any other person the Advocate considers appropriate or necessary to notify in the circumstances.

**Additional notice**

- (3) In conducting an investigation, the Advocate shall, at the commencement and the conclusion of the investigation, make reasonable efforts to notify the following persons or groups of the commencement or conclusion, as the case may be, of the investigation:
- (a) any other public body or community organization that, in the opinion of the Advocate, should be notified;
  - (b) the parent, grandparent, guardian or caregiver of the child or youth;



- (c) the designated representative;
- (d) a band where, in the opinion of the Advocate, the band should be notified;
- (e) the chief coroner, where the Advocate considers it appropriate;
- (f) any other person or group, or class of persons or groups, that the Advocate considers appropriate.

**Right to make representations**

- (4) In conducting an investigation under subsection (1) the Advocate shall make reasonable efforts to involve the following persons, including giving them the opportunity to make representations to the Advocate:
  - (a) the public body or community organization that delivered a reviewable service to the child or youth, and any other public body or community organization whose work is relevant to the investigation;
  - (b) the parent, grandparent, guardian or caregiver of the child or youth;
  - (c) any relevant band;
  - (d) the designated representative;
  - (e) any other person or group, or class of persons or groups, that the Advocate considers appropriate.

**Limitations on right to make representations**

- (5) Despite subsections (3) and (4), the Advocate may decide not to notify or involve a person if doing so could, in the opinion of the Advocate, reasonably be expected to
  - (a) have a potentially harmful effect on that person or another person; or
  - (b) interfere with an investigation under subsection (1).

**Jurisdiction of police, coroner**

- (6) Despite subsections (1) and (3), the Advocate shall not investigate the serious injury or death of a child or youth until the latest of
  - (a) the completion of a criminal investigation and criminal court proceedings, if any, respecting the serious injury or death of the child or youth, unless the Minister of Justice and Public Safety and Attorney General gives the Advocate written permission to proceed with an investigation prior to completion of one or both of those processes;
  - (b) the completion of an investigation undertaken by or at the direction of the Office of the Police Commissioner respecting the serious injury or death of the child or youth; and
  - (c) if a coroner investigates the death of the child or youth, until the later of
    - (i) the coroner's indicating, pursuant to the *Coroners Act* R.S.P.E.I. 1988, Cap. C-25.1, that the investigation is complete and an inquest is not necessary in respect of the death, and
    - (ii) the date on which a coroner sends, under subsection 23(1) of the *Coroners Act*, notice of an inquest to a sheriff, directing the sheriff to summon a jury for that purpose.

**Jurisdiction of public body, etc.**

- (7) Despite subsections (1) and (3), where a public body or community organization has, at the time of the serious injury or death of a child or youth, written procedures in place for investigating injuries or deaths, and the public body or community organization investigates

the serious injury or death of the child or youth, the Advocate shall not investigate the serious injury or death of the child or youth until the earlier of

- (a) the completion of the investigation by the public body or community organization, as the case may be; and
- (b) the date the public body or community organization provides the Advocate with a written consent to investigate the serious injury or death of the child or youth.

**23. Power to compel testimony and order disclosure**

- (1) For the purposes of an investigation under this Act, and subject to subsections 15(2) and (3), the Advocate may make an order requiring a person to do either or both of the following:
  - (a) attend, in person or by electronic means, before the Advocate to answer questions on oath or affirmation, or in any other manner;
  - (b) produce for the Advocate a record or object in the person's possession or control.

**Application to court**

- (2) The Advocate may apply to the Supreme Court for an order
  - (a) directing a person to comply with an order made under subsection (1); or
  - (b) directing an officer or governing member of a corporation to cause the corporation to comply with an order made under subsection (1).

**Requirement to comply**

- (3) Any penalty imposed by the Court on a person who is in contempt of an order of the Court under subsection (2) does not relieve the person from the requirement to comply with the order of the Advocate under subsection (1).

**24. Multidisciplinary teams**

The Advocate may establish and appoint the members of multidisciplinary teams to provide advice and guidance to the Advocate respecting individual reviews and investigations of serious injuries or deaths of children and youth conducted under subsections 21(3) and 22(1), as well as systemic reviews using data from one or more reviews or investigations conducted under subsection 21(3) or 22(1).

**25. Consultation**

- (1) At any time during or after a review under subsection 21(3) or an investigation under subsection 22(1), the Advocate may consult with any person whose expertise or information the Advocate considers necessary or appropriate in relation to the serious injury or death of the child or youth.

**Consultation with public body, etc.**

- (2) If, during a review under subsection 21(3) or an investigation under subsection 22(1), the Advocate receives a request for consultation from a public body or community organization, the Advocate may consult with the public body or community organization in relation to the serious injury or death of the child or youth.

**Disclosure and recommendations**

- (3) Where the Advocate consults with a public body or community organization under subsection (2), the Advocate may



- (a) disclose to the public body or community organization the personal information or personal health information the Advocate considers necessary and appropriate; and
- (b) make recommendations to the public body or community organization to improve the effectiveness and responsiveness of a service.

## PART 7 - REPORTS

### 26. Report of investigation

- (1) Following an investigation under subsection 12(2) or 22(1), the Advocate shall report the results of the investigation to
  - (a) the public body or community organization that provided the reviewable service that is a subject of the report; and
  - (b) any other public body, community organization or person that the Advocate considers appropriate.

#### Contents of report

- (2) A report made under subsection (1) shall contain the Advocate's reasons for undertaking the investigation and may contain
  - (a) recommendations respecting reviewable services for
    - (i) the public body or community organization that is a subject of the report, or
    - (ii) any other public body or community organization that the Advocate considers appropriate;
  - (b) a disclosure of personal information or personal health information if, in the opinion of the Advocate,
    - (i) the disclosure is necessary to support the findings and recommendations contained in the report, and
    - (ii) the public interest in the disclosure outweighs the privacy interests of the person whose personal information or personal health information is disclosed in the report; and
  - (c) any other matters the Advocate considers relevant.

#### No finding of legal responsibility

- (3) A report made under subsection (1) shall not contain a finding of legal responsibility.

#### Requirement to respond

- (4) A public body or community organization in respect of which the Advocate has made recommendations under clause (2)(a) shall respond in writing to the Advocate in respect of those recommendations within the period of time required by the Advocate.

### 27. Report by Advocate

The Advocate may compile and analyze the information received for reviews conducted under subsection 21(3) and from investigations conducted under subsection 21(1) and produce a report of the compiled and analyzed information that does not contain information in individually identifiable form.

**28. Special report**

Subject to sections 18 and 19, in order to improve the effectiveness and responsiveness of reviewable services, the Advocate may make a special report to the Standing Committee on Legislative Management, or to another standing or special committee of the Legislative Assembly as directed by the Standing Committee on Legislative Management, that

- (a) includes recommendations respecting reviewable services for a public body or community organization that is the subject of an investigation, and any other public body or community organization that the Advocate considers appropriate;
- (b) refers to and comments on any matter the Advocate has reviewed under subsection 21(3) or investigated under subsection 22(1); and
- (c) includes information the Advocate considers necessary or advisable about any matter for which the Advocate has responsibility under this Act.

**29. Publication of reports**

The Advocate shall publish any report prepared under section 26, 27 or 28, and any response to recommendations made by the Advocate under clause 26(2)(a), by any means that in the opinion of the Advocate is appropriate and effective for the purpose of bringing the report to the attention of the general public.

**30. Annual report**

- (1) The Advocate shall prepare an annual report that meets the requirements of subsection (2) and submit the report to the Speaker of the Legislative Assembly not later than March 30 following the close of the fiscal year to which the report relates, and the Speaker shall
  - (a) lay the report before the Legislative Assembly on receipt of the report; or
  - (b) where the Legislative Assembly is not in session, lay the report before the Legislative Assembly at the commencement of the next sitting of the Legislative Assembly.

**Content of annual report**

- (2) Subject to sections 18 and 19, an annual report may contain whatever information the Advocate considers appropriate, but shall contain, at a minimum, a report on the activities of the Office, the outcomes expected in the fiscal year in which the report is made, and the results achieved in the previous fiscal year.

## **PART 8 - LIABILITY, OFFENCES, REVIEW AND REGULATIONS**

**31. Protection from personal liability**

- (1) No action lies or may be commenced or maintained in respect of anything done or omitted to be done in good faith in the exercise or intended exercise of any power or in the performance or intended performance of any duty or function under this Act, against
  - (a) the Advocate;
  - (b) the Deputy Advocate;
  
  - (c) a person employed or engaged under section 7; or
  - (d) a person providing a service under contract to the Advocate or the Office.



**Liability under other Act**

- (2) No person is liable to any civil action under another Act solely by reason of the person's compliance, in good faith, with a request or requirement of the Advocate under this Act.

**32. Protections for persons giving information**

No person shall discharge, suspend, expel, intimidate, coerce, evict or impose a financial or other penalty on, or otherwise discriminate against, another person because the other person gives information to the Advocate or otherwise assists the Advocate in an investigation or other proceeding under this Act.

**33. Advocate and Office staff not compellable as witnesses**

- (1) The Advocate, the Deputy Advocate and a person employed or engaged under section 7 shall not give or be compelled to give evidence in an action in respect of any matter coming to the Advocate's, Deputy Advocate's or person's knowledge in the exercise of powers and the performance of duties and functions under this Act, except
- (a) to enforce the Advocate's powers of investigation;
  - (b) to enforce compliance with this Act; or
  - (c) in a prosecution for perjury.

**Communications privileged**

- (2) The following information, records and reports are privileged and not admissible in evidence in an action or proceeding, except in an action or proceeding to enforce this Act or in a prosecution for perjury:
- (a) anything said, any information given and any record produced during a review or investigation by the Advocate under this Act;
  - (b) a report made after an investigation under section 26.

**34. Offence and penalty**

Every person who does any of the following is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term not exceeding three months, or both:

- (a) obstructs, hinders or resists the Advocate or any other person carrying out responsibilities or exercising powers under this Act;
- (b) refuses or fails to comply with a lawful requirement of the Advocate or any other person under this Act;
- (c) makes a false statement to or misleads or attempts to mislead the Advocate or any other person carrying out responsibilities or exercising powers under this Act;
- (d) contravenes or fails to comply with a provision of this Act.

**35. Review of Act**

Within five years after this Act comes into force, and at least once in every five years after that, the Standing Committee on Legislative Management shall conduct a comprehensive review of this Act.

**36. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) prescribing a service or program as a reviewable service for the purposes of this Act;
- (b) prescribing additional matters or proceedings for which the Advocate may appoint legal counsel under clause 12(2)(c);
- (c) prescribing additional functions of the Advocate for the purposes of clause 12(2)(i);
- (d) respecting minimum requirements for protection of personal information and personal health information for the purpose of an agreement entered into under section 17;
- (e) defining any term used but not defined in this Act;
- (f) respecting any matter necessary or advisable to carry out the purposes of this Act.

**PART 9 - CONSEQUENTIAL AMENDMENTS**

**37. Child Protection Act**

- (1) **The *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1, is amended as provided by this section.**
- (2) **Subsection 7(2) of the Act is amended by the addition of the following after clause (g):**
  - (g.1) the information is required for the purposes of a review or an investigation by the Child and Youth Advocate under the *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3;

**38. Civil Service Act**

- (1) **The *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8, is amended as provided by this section.**
- (2) **Clause 17(2)(b) of the Act is amended by the addition of the following after subclause (i):**
  - (i.1) Office of the Child and Youth Advocate,

**39. Health Information Act**

- (1) **The *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, is amended as provided by this section.**
- (2) **Subsection 4(2) of the Act is amended by the addition of the following after clause (a):**
  - (a.1) the *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3;

## **PART 10 - COMMENCEMENT**

**40. Coming into force**

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

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## CHAPTER 21

(Bill No. 30)

### Child and Youth Advocate Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 19, 2019
<i>2nd Reading:</i>	November 20, 2019
<i>To Committee:</i>	November 20, 2019
<i>Reported:</i>	November 20, 2019
<i>3rd Reading and Pass:</i>	November 20, 2019
<i>Assent:</i>	November 28, 2019

#### SIGNATURES:

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Honourable Antoinette Perry, Lieutenant Governor

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Honourable Colin LaVie, Speaker

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Joseph Jeffrey, Clerk

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Hon. Dennis King  
Premier

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GOVERNMENT BILL

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2019  
1st SESSION, 66th GENERAL ASSEMBLY