

## Frequently Asked Questions about the *Child and Youth Advocate Act*

### **What is the purpose of the *Child and Youth Advocate Act*?**

The purpose of the Act is to:

- Promote and protect the rights of children and youth
- Provide oversight of government funded programs and services to children and youth

### **What does the Preamble of the *Child and Youth Advocate Act* mean?**

The Preamble to the *Child and Youth Advocate Act* is helpful in understanding the purpose and objectives of the Act. It outlines the intent of the Legislative Assembly of Prince Edward Island in passing the Act and it can be used as a guiding set of principles to assist in resolving any ambiguity in language.

### **What does the Preamble of *Child and Youth Advocate Act* say?**

The Preamble says that the:

- aim of the *Child and Youth Advocate Act* is to be consistent with and build upon the principles of the United Nations Convention on the Rights of the Child;
- Government of PEI acknowledges that formative childhood experiences have long-term implications for the individual and for society;
- Government of PEI 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;
- Government of PEI 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;
- Government of PEI recognizes the importance of the preservation and promotion of cultural identity for Indigenous children and youth; and
- Government of PEI is committed to ensuring that the rights, interests and viewpoints of children and youth are considered in matters affecting them.

### **Is the Child and Youth Advocate independent?**

Yes. All Child and Youth Advocates in Canada are independent and now PEI's Child and Youth Advocate is also independent.

### **What does an independent Child and Youth Advocate mean?**

An independent Child and Youth Advocate means that the Advocate does not report to any branch of the provincial government but is an independent officer of the Legislative Assembly. That allows the Advocate to advance positions and recommendations without the approval or interference of the government of the day. It also enables the Advocate to amplify the voices of children and youth and to take forward positions that are based upon those voices and viewpoints. The independence also allows the Advocate to table public reports in the Legislative Assembly and hold the provincial government accountable where it fails to take steps necessary to promote the rights, interests and well-being of children and youth.

### **What is the United Nations Convention on the Rights of the Child (UNCRC)?**

The United Nations Convention on the Rights of the Child (CRC) is an international legal agreement that describes the human rights of every child in the world regardless of race, ethnicity, religion, gender, abilities, birth order or other status. All of the rights described in the 54 articles of the agreement are equally important and connected to each other. Every child in the world is born with these rights and no one can take them away. A child is a person up to the age of 18 years. Canada ratified the CRC in 1991.

There are three basic groups of human rights of every child and youth in the United Nations Convention on the Rights of the Child:

- **Protection** from harm such as abuse, violence and exploitation of any kind
- **Provision** of resources needed for healthy development such as food, shelter, clean water, health care, education and play
- **Participation** by exercising civic rights without discrimination such as expressing views, speaking up on matters that directly affect them or sharing in decision-making.

### **Does the new *Child and Youth Advocate Act* include all children and youth on Prince Edward Island?**

Yes. The new *Child and Youth Advocate Act* includes all persons on PEI under the age of 18 years. Every child and youth on PEI has the right to communicate with the Advocate privately and in confidence.

### **Who is a Child?**

A child is a person who is under 18 years of age or a person who is under 21 years of age and is receiving an extended service under section 46 of the *PEI Child Protection Act*.

### **Who is a Youth?**

A youth is a person who is over the age of 12 years and under the age of 18 years.

### **Who is a Child and Youth Advocate?**

A Child and Youth Advocate is an Independent Officer of the Legislative Assembly responsible to represent the rights, interests and viewpoints of children and youth.

### **What does the Child and Youth Advocate do?**

A Child and Youth Advocate:

- Listens to children and youth and helps them have their voices heard
- Helps connect children, youth and their families to programs and services
- Works with families, professionals, communities and government to protect and promote the rights of children and youth
- Advocates for individual children and youth and groups of children and youth
- Makes recommendations
- Makes reports to inform the public about important matters for children and youth

### **What does the Child and Youth Advocate not do?**

The Child and Youth Advocate does not:

- Change a decision made by a program or service provided by government or a community organization
- Represent or speak for children or youth in a court of law
- Change arrangements for children and youth in custody or access matters
- Exercise jurisdiction over or act with respect to judges, justices of the peace and functions of any court in PEI
- Exercise jurisdiction over or act with respect to the deliberations and proceedings of the Executive Council or one of its committees

### **Is there a difference between mandatory and discretionary functions of the Child and Youth Advocate?**

Yes. Mandatory functions, as set out in the *Child and Youth Advocate Act*, consist of:

- Advocating for children, youth and their families, either individually or as a group, respecting reviewable services: by providing them with information and advice; representing the rights, interests and viewpoints of children and youth in receipt of or eligible to receive reviewable

services; and, assisting children and youth in their self-advocacy skills in processes where decisions are made that affect them

- Receiving and reviewing any matter in relation to a reviewable service provided to a child or youth, or a group of children or youth
- Promoting and providing public education and advocacy respecting the rights, interests and well-being of children and youth, including the UN Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples as it affects children and youth
- Monitoring implementation of and compliance with recommendations made in the Advocate's public reports
- Promoting the rights of children and youth in relation to Government legislation, policies, protocols, practices and reviewable services to children and youth
- Working with others to support and create opportunities for the well-being of children and youth
- Undertaking or collaborating in research related to improving reviewable services

On the other hand, discretionary functions, as set out in the *Child and Youth Advocate Act*, include:

- Receiving and investigating any matter that comes to the Advocate's attention from any source concerning a child or youth or a group of children and youth who receive or are eligible to receive a reviewable service
- Assisting a child or youth in appealing or reviewing a decision related to a reviewable service
- Advocating on behalf of a child or youth in relation to a reviewable service
- Appointing or causing to be appointed legal counsel to represent a child or youth with respect to a matter or proceeding under the *Child Protection Act*
- Reviewing, investigating and reporting on the serious injury or death of a child or youth
- Advocating on behalf of an individual child or youth in relation to a reviewable service
- Attempting to resolve concerns through the use of negotiation, conciliation, mediation or other non-adversarial approaches, and if appropriate, making recommendations to public bodies, community organizations or families
- Conducting or contracting 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
- Advising or making recommendations to any public body or community organization delivering reviewable services on any matter relating to the rights, interests and well-being of children and youth

### **What is the Office of the Child and Youth Advocate?**

The Office of the Child and Youth Advocate is an office staffed by a team of professionals available to assist the Child and Youth Advocate in carrying out his responsibilities.

### **How will people know about the Child and Youth Advocate?**

The Office of the Child and Youth Advocate will develop information materials about the *Child and Youth Advocate Act* and provide training across the province. A website will be developed for the office with two distinct streams – one for children and youth – and the other for everyone else. In the meantime, there is some basic information on the Legislative Assembly website for the Office of the Child and Youth Advocate.

### **How will children and youth know about the Child and Youth Advocate?**

The Office of the Child and Youth Advocate will ask children and youth to help develop child-friendly information and training material. The Child and Youth Advocate and staff will visit with children and youth to help share information with them. Materials will be made available in spaces where children and youth frequent.

### **Who can contact the Child and Youth Advocate?**

Any person can contact the Advocate and referrals are not required. All persons contacting the office receive a friendly, respectful and timely response. All persons are welcome to bring a support person to any meeting with a staff person of the Office of the Child and Youth Advocate.

### **Is the name of the person making a report to the Child and Youth Advocate protected?**

Yes. The name of the person making the report is confidential.

### **What happens when someone contacts the Office of the Child and Youth Advocate?**

When any person contacts the Office of the Child and Youth Advocate, a staff person will ask questions for more information:

- reason for the call
- caller's contact information
- caller's relationship to the child or youth if the caller is an adult
- what, if any, other services may be involved and what happened
- what is the caller expecting the Office of the Child and Youth Advocate can do

### **How long will it take the Child and Youth Advocate to call back?**

The Office of the Child and Youth Advocate will be developing policies and all calls will be returned in a timely manner with priority response, same day, to children and youth contacting the office during business hours and, same day to three business days for adults contacting the Office.

### **Does a parent have to consent for a child or youth to talk to the Child and Youth Advocate?**

No. Children and youth have a right to talk to the Child and Youth Advocate privately and in confidence.

There are two safety exceptions:

- if a child or youth talks about being hurt by a parent, this shall be reported immediately to Child Protection Services; and
- if a child or youth talks about hurting themselves, this shall be reported immediately to a parent or professional so a safety plan can be made with the child or youth.

At any time, a child or youth may give consent for the Child and Youth Advocate to talk to a parent or another person.

### **Who is required to give information to the Child and Youth Advocate?**

The Child and Youth Advocate is able to collect information to help carry out responsibilities under the *Child and Youth Advocate Act*.

The Child and Youth Advocate is also able to compel people to provide information when conducting an investigation but there are some exceptions:

- the name of a person who made a report under the *Child Protection Act*;
- information about a placement or adoption of a child under the *Adoption Act*;
- information from reviews under the *Health Services Act*;
- information from the Children's Lawyer under the *Judicature Act*; and,
- Information that is subject to a legal privilege, including solicitor-client privilege, or the privilege respecting Cabinet confidentiality.

### **What is the difference between the Children's Lawyer and the Child and Youth Advocate?**

The Child and Youth Advocate is an independent officer of the Legislative Assembly. The Children's Lawyer is a lawyer who provides legal advice to children and youth when parents are in high conflict with each other and reports to the Department of Justice and Public Safety. The Child and Youth Advocate engages in out of court advocacy and does not provide legal advice to children and youth.

### **What is the difference between Child Protection Services and the Child and Youth Advocate?**

Child Protection Services is a government program responsible to protect children from parental harm. The *PEI Child Protection Act* is the law that all child protection social workers must follow. The Child and Youth Advocate is not a government program and does not provide child protection services. Every person on PEI who has knowledge or reason to suspect that a child is in need of protection must report the information to Child Protection Services. This includes the Child and Youth Advocate and his staff.

**Can the Child and Youth Advocate tell Child Protection Services what to do?**

No. The Advocate listens to children and youth, asks questions to understand concerns and then gives objective information to Child Protection Services to help improve programs and services.

**Can Child Protection Services get records from the Child and Youth Advocate?**

No. Records of the Office of the Child and Youth Advocate are not “records” as defined in the *Child Protection Act*. The Child and Youth Advocate is an Independent Officer of the Legislature, and as such, his office’s records are exempt from the *Freedom of Information and Protection of Privacy Act*.

**Is the Child and Youth Advocate subject to judicial review?**

No. The Child and Youth Advocate does not make decisions. The Child and Youth Advocate only makes recommendations and recommendations are not subject to judicial review.

**Do government and community organizations have to act on the recommendations of the Child and Youth Advocate?**

No. The decision to act on a recommendation of the Child and Youth Advocate is the responsibility of government and community organizations. However, while the Advocate cannot compel these public bodies to take specific action, he can influence their decision-making in various ways.

**What is a “reviewable program or service”?**

A reviewable program or service is a program or service provided to a child or youth or the family of a child or youth funded by government and provided by a community organization that includes, but is not limited to, the following:

- Child Protection Services
- Adoption Services
- Social Assistance and Accessibility Support Services
- Education
- Health, Mental health and Addiction Services
- Justice Services
- Early Childhood Development and Child Care

### **What does “serious injury” mean?**

Serious injury means an injury that:

- may result in the death of a child or youth, or
- may cause serious or long-term impairment to the mental or physical health of a child or youth

### **Who has to report a serious injury or death of a child or youth to the Advocate?**

- Any person who has knowledge of a serious injury or death of a child or youth must report the information to the Advocate; and,
- every government program or community organization that provides or provided a reviewable service to a child or youth, or their family, within two years prior to the serious injury or death of a child or youth, must report the information to the Advocate

### **How does someone contact the Child and Youth Advocate?**

Anyone can contact the Office of the Child and Youth Advocate by email, by telephone or in person:

- 1-902-368-5630
- [voiceforchildren@ocyapei.ca](mailto:voiceforchildren@ocyapei.ca)
- 119 Kent Street, BDC Place, Suite 500, Charlottetown, PEI

### **What are the business hours for the Office of the Child and Youth Advocate?**

The Office of the Child and Youth Advocate is open Monday to Friday from 8:00 am to 4:00 pm.

The Office is closed in the evenings and on the weekends, and it is closed for all holidays.