



إعلاء صوت الشباب
Wzmocnić głos młodzieży
উন্নয়ন করে তরুণদের
Dátbñh CÀKbPÇbç DñPÇÀa
Amplify Youth Voice
Donner une voix aux jeunes
Osnažiti glas mladih
Destačava voz dos jovens
扩大青年的声音

**Ontario
Child
Advocate**

**Intervenant
en faveur
des enfants
de l'Ontario**

**Ontario Child Advocate 2019
Report to the Legislature**

Ontario Child Advocate Report to the Legislature 2018–19

Office of the Provincial Advocate for Children and Youth © 2019

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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

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March 29, 2019

The Honourable Ted Arnott
Speaker of the Legislative Assembly of Ontario
Legislative Building, Room 180 Queen's Park
Toronto Ontario M7A 1A2

Dear Mr. Speaker:

In accordance with 21(1) of the *Provincial Advocate for Children and Youth Act, 2007*, I am pleased to enclose the 2018–19 Annual Report for the Office of the Provincial Advocate for Children and Youth.

Sincerely,

Irwin Elman
Provincial Advocate for Children and Youth

Message from the Provincial Advocate

Over 40 years ago, Ontario's appointment of the first provincial Child Advocate in 1978 was one of the first government-sponsored child advocacy offices in the world.¹ In 1984, the Legislature established the Office of Child and Family Service Advocacy ("OCFSA") under the *Child and Family Services Act*.² In 2007 the Ontario Legislature transformed the OFSCA into an independent Office of the Legislature with the passing of the *Office of the Provincial Advocate for Children and Youth Act, 2007*.³ On December 6, 2018, the Ontario government passed Bill 57, Restoring Trust, Transparency and Accountability Act, 2018 which repeals the *Office of the Provincial Advocate for Children and Youth Act, 2007* and will close the Office of the Provincial Child Advocate on May 1, 2019. This will leave Ontario as the only province in Canada without an independent Child Advocate. This decision was made by the Ontario government in just over three weeks, with no advance notice and minimal consultation, and the repeal of the *Act* has the potential to undermine over 40 years of learning and work.

We live and work in a democracy and my Office must respect the right of the Ontario Legislature, led by elected representatives, to make day-to-day decisions affecting the citizens of the province. We have also understood and respected that the role of an independent Office of the Legislature is not an Office entirely independent from the Legislature. The Office of the Provincial Advocate for Children and Youth will close on May 1, 2019 and we must accept that fact. However, in an effort to help guide the Ontario Legislature in decisions to come, attached to this final annual report of the Office of the Provincial Advocate for Children and Youth ("Advocate's Office"), is a copy of the written submission my Office made to the Legislative Committee in December, 2018 on the decision to repeal the *Office of the Provincial Advocate for Children and Youth Act, 2007*. I remain convinced that the decision by the Ontario government to eliminate the Office is a great loss to many of the most vulnerable children and youth in Ontario.

¹ Whitehead Research Consultants Ltd., *A New Model for Child and Youth Advocacy in Ontario: Report to the Ministry of Children and Youth Services* (2004) at 1.

² *Child and Family Services Act, 1984*, SO 1984, c 55, s. 98.

³ *Office of the Provincial Advocate for Children and Youth Act, 2007*, SO 2007, c 9

In the months that followed the passing of the legislation that will close my Office, I have worked with the Office of the Ombudsman of Ontario to provide my best advice on how he might undertake his new role. I remain concerned that many children and youth cannot be served under the legislation that establishes the new mandate of the Ontario Ombudsman. The Ombudsman will not be notified of death or serious bodily harm to children who are living in residential care, as was the case under the *Office of the Provincial Advocate for Children and Youth Act*. The Ombudsman will not be performing an advocacy function or offering rights education to children and youth. Many service providers will no longer have a legislated duty to inform children about their right to speak to the Ombudsman Office. And finally, the Ombudsman is prevented by the legislation from launching an investigation into the death of a child in his mandate. This is extremely concerning, and effectively eliminates many of the important oversight roles fulfilled by the independent Office of the Provincial Advocate for Children and Youth.

“You ask us
what you can
do? Just
listen.”

Youth Participant
Feathers of Hope Forum

There can be no doubt that the Office of the Ontario Ombudsman is an exemplar of the traditional role of an Ombudsman, and does excellent work in fulfilling the role of accepting complaints, investigating matters in the public interest with a focus on “administrative fairness”, constructive solutions to problems, and systemic trends and complaints. This is an important function, but it is not child advocacy.

Imagine for a moment that you are a child or a young person living far from home. You have been taken into care and are living in a group home or foster home. Something isn’t right. You feel alone. You feel frightened. You feel that your life is not your own. Despite all of this you pick up the phone to call or send a text to ask for help from the Advocate’s Office. You want someone to listen and understand, and someone to validate your feelings and concerns. It takes great courage and strength for young people to reach out to complain about the systems of care that they live within. The Office that young people call MUST be independent from the responsible government Ministry, as was the case with my Office and remains the case in other jurisdictions across the country with an independent Child Advocate. With the closure of the Office, I am deeply concerned that those calls may not be answered because some children will now exist outside of the mandate of the Ombudsman.

It is important to listen to young people and hear what they have to say about their lives. As I recall, one person told us:

“You asked us what we want to do once we complete high school,” she said. “I don’t want to answer that, I want to tell you this.” She sighed, and started quietly. I did not know what she was going to say and the group of youth in care she was part of, who also were listening, seemed to wait with baited breath.

“I was a young child in a home where bad things were happening. I don’t need to tell you as you already know no child ever came into care because of something they have done. Let’s just say I have not overcome yet what was happening then, but as a child I did learn to survive. I sort of ducked and covered. What was happening was certainly outside of my control but I was trying to cope.” She went on, “Then one day a knock came on my classroom door. I think it was around Grade 3 and maybe I was 9 years old. They said I had to go down to the Office. There I met some lady. She asked if she could talk to me. She said she was a social worker and began asking questions about life at home. My head started spinning. I could hardly breathe. My secret was out and I was panicking. All of this was outside of my control. She rolled up my sleeves and my pant legs and checked for bruises. Outside of my control. Eventually she said we had to go to my house and see my Mother. Outside of my control. I knew all h—ll [heck] would break loose and when we got home that’s what happened. It was awful. My Mom was screaming at the worker and yelling at me. The worker said we have to go. Outside of my control. I was taken to a temporary foster home. Outside of my control. New rules, new people to live with, new everything. Outside of my control. I remember the worker said another worker would come to see me in a few days. I liked this first worker well enough but she said she was Intake and I would meet a Family Worker. That was the first of maybe 15 changes in workers I have had over the past 9 years in care. I am not blaming them they have lives too but each change was outside of my control. When the new worker came she said I would be going to a new foster home outside the city. The move outside of my control. This was the first of 10 changes in homes over the last 9 years. Each move, even though I think maybe a few were my fault, seemed outside of my control. My last foster home they told me I had to leave and live on my own because I was turning 18 years old. I liked the home but they said it was the rules. I moved, outside of my control. Now I’m looking at leaving care altogether when I turn 21 years of age. I am going to get the golden boot dropped off the edge of the world alone and scared. Outside of my control.

“So,” she said, “when you ask us what we want to do when we leave care it’s unfair. What makes you think we can have hope to make any plans when our whole lives and experience in care has been outside of our control? We would have to be stupid or ill to believe we can have that hope. We learn that nothing is within our control so why bother making a plan. That’s why the Advocate Office is

so important. Any time when you can help us have a voice and have a sense of control of decisions made about us you are helping us be part of our own lives. You are helping us have hope and helping us to have an answer to your question about plans for our future.”

The Role of the Advocate

Over the past 10 years, my Office evolved to undertake four advocacy functions as found in our guiding legislation: Individual Rights Advocacy, Systemic Advocacy, Community Development Advocacy and Investigations. Our Investigative function was added in 2016 and has been an important tool to gain access to information about the realities lived by young people in Ontario who are connected to systems of care.

The Legislation mandated us to “partner” with children and youth to “bring their issues forward” and be an “exemplar for participation of children and youth”. The entire flavour of the *Act* placed a central focus on the voice of the child, their right to participate in processes under the *Child Youth and Family Service Act* and the *United Nations Convention on the Rights of the Child*, and our obligation to provide advocacy that is sensitive to any special requirements or needs of the young person. We took these instructions seriously.

The 12 year old boy was lying in his bed in an institution meant for children who had complex special needs and who were nearing the end of their life. It seemed like a hospital but there was a warmth to the place. It was comfortable. The nurse was giving us a tour and we came to the boy’s bed. “This is Steven,” she said. Steven could not speak and we learned that he could not move. I noticed that surrounding his bed was a plethora of Montreal Canadiens merchandise. Perhaps I noticed because I myself am a Habs fan. I asked her later how Steven communicated. How did they know he was a Montreal fan? She said, “Well, we communicate in relationship. We know what he thinks and is feeling. When he is displeased he is certainly good at letting us know and it’s the same with what he likes. He has learned to use his tongue movement to provide us direction for instance.” I thought to myself “communication in relationship” was a great concept that I did not know if I could ever do. On the way home, and many days since then, I have thought about Steven. I learned that he died but what I think about was him and the Montreal Canadiens. To some, even to me perhaps before he opened my eyes, Steven was an unfortunate child paralyzed in bed, unable to speak and nearing death. But he also was a Montreal Canadiens fan just like me. He belonged to the same fanatical insufferable fan base that I did. The Montreal banners and photos above his bed, and the Montreal Canadiens blanket, were his voice. He was telling me and the world that he was a fan. He had named his world, and in doing this he became a person instead of a patient. He was more than his disability.

The Advocacy Functions

The four advocacy functions were developed by my Office to work seamlessly, with integrity and synergy. Together they were built to provide, and did provide, powerful and incontrovertible advocacy for children and youth.

Individual Rights Advocacy

Every year we respond to thousands of calls, texts, and social media direct messages from young people, their families, caregivers and other members of their support network. We listen. For young people sometimes it is the first time they have ever been heard. We ask them what they want to happen — what would “good” look like. Starting with a rights-based approach we help young people develop an advocacy plan to ensure that their rights are afforded to them and that their voice is heard. The office takes direction from them about what support they need in implementing their advocacy plan.

Systemic Advocacy

When we listen to the concerns of children and youth we often see trends or patterns related to gaps in service or in the practices of service providers. Sometimes government Ministries have created new policy or legislation to meet an identified need for young people connected to the child welfare system, or addressed concerns about a specific service provider. My Office has worked with the young people who have direct knowledge of the issues and services provided, and we have been able to inform decision makers through the wisdom of lived experience.

Community Development Advocacy

My Office often brought young people within our mandate together in order for them to collectively identify issues and concerns that were common to all of them, and to make a plan to advocate for positive and fundamental change. The lived experience of these young people continues to be a credible and powerful source of knowledge in the Province. We have created safe spaces where young people can discuss concerns, identify common issues, and advocate to improve services and resources in their communities throughout the Province.

Investigations

Since 2016 we have been able to accept complaints involving a child or youth who is receiving or accessing services from a Children’s Aid Society or from a residential licensee where a CAS is the placing agency. If other complaint mechanisms have been accessed and completed, my Office may then investigate the complaint. The investigation function is the aspect of our Office’s work that has been transferred to the Ombudsman with the passing of the *Restoring Trust, Transparency and Accountability Act, 2018*.

International Recognition

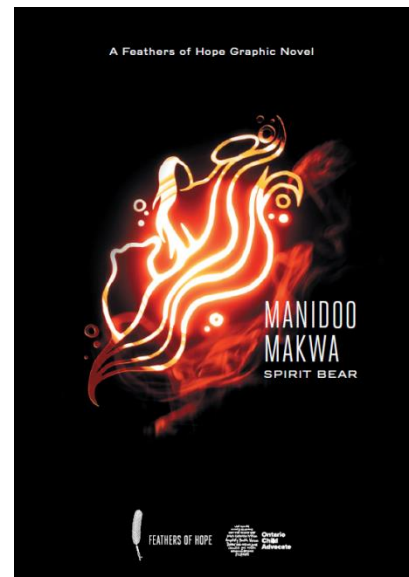
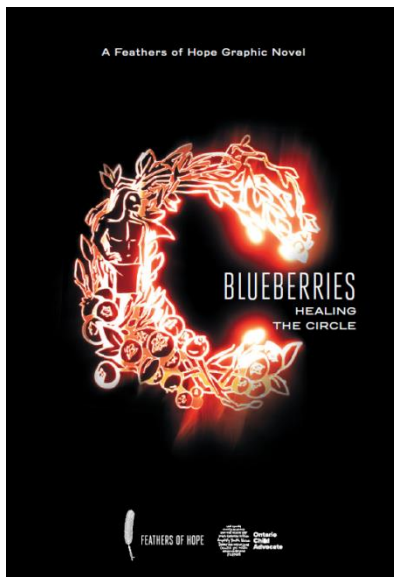
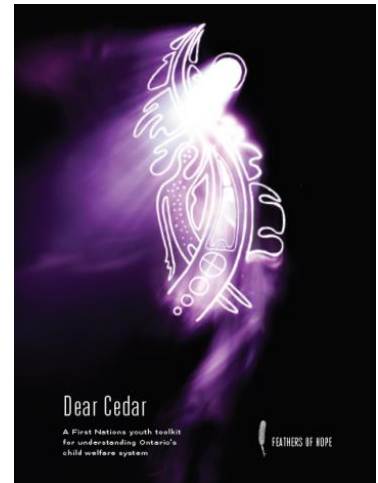
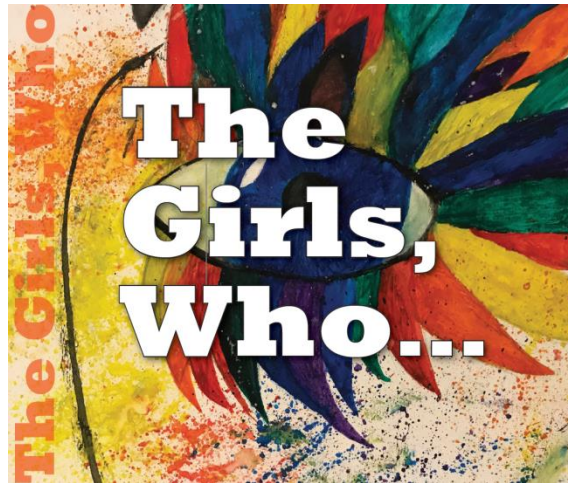
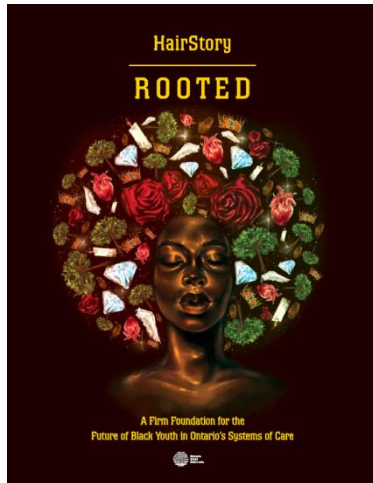
The Office's model of child advocacy was honoured by a second Amethyst Award from the Ontario Public Service. In 2017–18 the Office was awarded the "Janus Korczak Child Rights Medal of Honour" from the Children's Ombudsman in Poland. In 2018 the Children's Ombudsman of Ukraine held a Summit led by children with disabilities in the country. The initiative developed through our Memorandum of Understanding for knowledge exchange with the Ukraine and was modelled on Ontario's "We Have Something To Say" initiative. This year my Office also signed a Memorandum of Understanding with a Professor in Tottori Prefecture to develop Japan's first child advocacy office, built on Ontario's model. In 2017 youth in and from care in Japan, inspired by Ontario's "Our Voice Our Turn" initiative elevating the voices of children in care, requested the use of the "Our Voice Our Turn" model and created their own "Our Voice Our Turn—Japan". Make no mistake that no resources of the Office were used in any of these international developments. They are mentioned here to reaffirm the influence the Office has had and the truly remarkable model of child advocacy that had been developed and which no longer exists.

Human Solutions to Institutional Problems

My Office has brought other groups of young people to support the Office with the wisdom of their lived experience in our standing at any Inquest into a child's death while they were receiving services from a Children's Aid Society. Our position has always been that any child who dies in care should have an Inquest that would honour their lives by protecting the living. One particular Inquest centred on the death of a 3 year old foster child. The group of youth who provided advice to us during the inquest, had all been in care. They met bi-weekly to hear what had transpired at the Inquest, to identify issues and to give feedback that would see their voices influence the Inquest and Jury recommendations to come. Some discussion in the youth group focused on moving from home to home because the case involved a young person who had moved at least 6 times in a few years. Frequent moves are a common experience for children in care. One of the group members said, "You know in my CAS a bunch of us youth got together. We were fed up having to put our stuff in garbage bags when we moved. It made us feel worthless and we thought at least we should have luggage to use. We knew our agency had no money for luggage so we go together with some workers to raise funds. Today we have luggage!" I thought the group member was finished but she said, "Wait. What I learned was that it's not about luggage. If we felt we had some control over our moves, if we were moving from one home where we felt cared for and respected to another home where we felt cared for and respected ... well ... sure luggage is important but really who would give a darn about the garbage bags." Turning to us she said, *"The luggage is an institutional solution to a human problem. You guys are always trying to solve human problems with institutional solutions and that's the problem. I get why you do it. It's because the human solutions are much harder to create but if you want real change that's what you have to do."*

As I told the Deputy Minister all of this one day the Deputy said, “What do you want us to do with that? We can’t legislate love.”

I responded to him by saying, “I know, but what young people are saying is that we can legislate the conditions in which love can flourish.”



A selection of c

Ontario Child Advocate

Highlights of Activities for 2018–19

- Approximately 2,500 calls received from or relating to concerns of children and youth within mandate.
- In person individual advocacy support to students in Ontario Provincial Schools for the Deaf and Blind as well as to students in Ministry of Education Demonstration Schools
- Report released: *Hairstory: Rooted A Firm Foundation for the Future of Black Youth in Ontario's Systems of Care*
- Feathers of Hope Health and Well Being Forum was held in Thunder Bay bringing together 100 First Nation youth from northern Ontario
- *Feathers of Hope Child Welfare Toolkit* was released. The Toolkit was produced in partnership with Feathers of Hope Youth Advisors stemming from the Feathers of Hope Child Welfare Forum
- *Feathers of Hope Culture and Belonging Forum* Report was released with companion graphic novels produced in partnership with Feathers of Hope Youth Advisors stemming from Feathers of Hope Culture and Belonging Forum
- The New Mentality released *From Crisis To Quality – Bridging Gaps In Child and Youth Mental Health Service*". This project was written by young people of the New Mentality and supported by Children's Mental Health Ontario and the Ontario Child Advocate
- Systemic Review of a number of Residential Care providers in Southwest Ontario
- Systemic Review of Special Section classrooms
- Release of *Indigenous Youth: Designing A Better Justice System* and launch of second phase by Winkler Foundation with support of Law Foundation of Ontario, Ontario Justice Education Network and the Ontario Child advocate
- Report by First Nation Youth Advisors on Post Crisis Response provided to and in partnership with Jays Care, Right to Play, and Save the Children Canada

At the Feathers of Hope Forum in Thunder Bay, I joined 100 plus First Nation youth from remote communities as they came together for four days. They spent the first three days getting to know each other and sharing their thoughts about the challenges they faced and what could be better. On the last day they participated in what we call a listening table. On this day decision makers (Ministers, Chiefs, Senior bureaucrats, service providers, etc.) came from across the province for a day to listen to the youth. The day was very difficult with lots of crying—not by the young people but the decision makers. It was very difficult to listen to what the young people had to say. The young people organized themselves in groups and each group of ten or so would present

together. After each group presented to the table there was an opportunity for the decision makers to ask questions. These questions were posed in writing and sent forward from the table to the group presenting. After the 6th presentation a decision maker could not take it anymore and sent the question, “Tell us what we can do?” The group received the paper which the question was written on. They read it out loud. They then circled together, as was their way, to create a collective answer. Collective knowledge is as, or more, important to them than individual knowledge. As the tension built they took their time coming up with an answer. Finally a young girl stepped forward out of the circle. Quiet, shy, and soft spoken, she said, “You ask us what you can do? Just listen.” She did not mean just listen to our recommendations and ideas for change, it was more than that. In the listening you are doing something. Making us whole. Creating the opportunity for hope. Just listen to us. Just listen to all who are in situations like us but aren’t here.

When my Office learned that we would be closing, staff completed their work with professionalism and the same dedication to the children they serve that they have demonstrated over the past decade. Without a doubt, they are the fiercest child advocates this province will ever see. Hundreds, if not thousands of children, youth and their allies, were impacted by the announcement that the Office was closing. They were distraught. The journey as an Office had been their journey too. Staff spent a great deal of time working with them to ensure they did not feel abandoned. Since the announcement, staff have spent time supporting them at their request in order to find ways of carrying out their advocacy through other vehicles. To that end, youth from our Feathers of Hope initiative and our Hairstory initiative have separately incorporated as non-profit youth led organizations to continue their work. It is humbling that young people have taken these steps; our hearts are full and our prayers are with them and their champions. It is not fair to them that they bear the burden to be agents of change confronting the very racism, homophobia, sexism, and ableism that they must face each and every day. Ontario must stand with them and be grateful for them, and for their determination to make a better province for all of us.

Child Deaths

In 2018 the Coroner of Ontario released a report entitled *Safe With Intervention* which was a review of 12 deaths of children living in residential care since 2014. The review was written by a panel of “experts” and was a pilot of a new way of reviewing child deaths. My office was adamant that this process must include an element of youth participation. We, along with Nishnawbe Aski Nation, brought the voices of young people in and from the residential care system to the panel.

Safe With Intervention was another in a long list of harrowing reports. It followed the Ministry of Children and Youth Services’ own “expert panel” report. It followed our own reports *Searching For Home* and *In Harm’s Way* about the perils of residential care. All of these reports called for an overhaul of the manner in which we serve children and support families.

For the past few years, we have partnered with the Coroner and the Ministry of Children and Youth Services to look at the child death review process in Ontario. In the process of reimagining the system, my Office pushed to ensure that an element of citizen participation would be included. I was also clear that any process we could ever participate in must be transparent and refused to agree to any suggestion that this child death review system, in its piloted format, could take the place of an Inquest.

In January 2019 the Coroner released publicly the *2017 Paediatric Death Review Committee report* and the *Deaths Under Five Committee Report*. In 2016, 121 deaths were reported where a Society was involved with the child, youth or family within 12 months of the death.⁴ Of those, 8 children died who were in the care of a Society at the time of their death and 6 were receiving Continued Care and Support for Youth from a Children's Aid Society at the time of their death.⁵ In 2017, 126 deaths were reported where a Society was involved with the child, youth or family within 12 months of the death.⁶ Of those, 21 children and youth were in CAS care or receiving Continued Care and Support for Youth at the time of their death.⁷ A total of 247 children lost over two years. If we accept that those in our systems of care are particularly vulnerable, I ask you as a Member of the Legislative Assembly to reflect on these numbers.

I ask you as a Member of the Legislative Assembly to ask questions.

These children no longer have an Advocate. I ask you to lead our province and tell all children in Ontario whether connected to a CAS in some way or not:

You will be protected.

You will have what you need when you need it to reach your full potential.

And to their families, however they are constituted (birth families, foster families, adoptive families, found families of friends and allies), we ask you to tell them:

Thank you. You will have what you need to do right by your children.

This is a vision and goal we must have for our province. We must state it to ourselves and to each other and then with children and youth create that province.

Child advocacy is not about "the best we can do". It is not about "clearing a waitlist". It is not about changing a specific curriculum. It is not about collapsing systems, organizations institutions into some sort of "super agency". It is not only about "money".

⁴ Office of the Chief Coroner, *Paediatric Death Review Committee and Deaths Under Five Committee: 2017 Annual Report* (2018) at 61.

⁵ Office of the Chief Coroner, *Paediatric Death Review Committee and Deaths Under Five Committee: 2017 Annual Report* (2018) at 59.

⁶ Office of the Chief Coroner, *Paediatric Death Review Committee and Deaths Under Five Committee: 2017 Annual Report* (2018) at 41.

⁷ Office of the Chief Coroner, *Paediatric Death Review Committee and Deaths Under Five Committee: 2017 Annual Report* (2018) at 59.

The meeting had been organized between the youth leaders set to release their report “My Real Lifebook” to the public and the Minister of the day and his staff. The youth wanted the Minister to agree to their recommendations. They were to release their report at the Legislature and they wanted him there to face the music and receive the report from them. He agreed. “One more thing,” said one of the youth leaders “We want to have the two Opposition Parties present and to receive the report with you.” Well that request raised the tension and came out of left field. The Minister said, “We can’t do that. It’s not how the Legislature is working right now.” The youth leader paused and considered her next answer, “You see Minister we are in care of the government which means that you are our parent right now. But that might change one day if there is an election. I am not saying it will but it could so you are kind of like a parent with joint custody. No child wants their parents arguing over them. What we want is you and the other parent(s) sitting down at the kitchen table with your children and saying ok what are we going to do? That would be doing things differently.” The Minister agreed.

My Office has had the privilege to walk with children and youth shining in the bright light of their potential. Whereas at one time they were invisible, my Office supported courageous young people to make themselves visible, to claim their rights, to use their voice. The accolades we have received from across the province, across the country and literally throughout the globe stems from the light of the potential of the youth we worked with falling on us as we walked beside them. We want young people to know that no decision of any government can dim that light. The light that young people have cast and the influence they have had will stand the test of time.

It is about doing things differently.



A handwritten signature in blue ink, consisting of stylized initials 'IE' followed by a long horizontal stroke.

Irwin Elman
Provincial Advocate for
Children and Youth

Advocacy: 2018–19 Highlights

Intake Service Statistics

Advocacy cases 2,298

April 1, 2018 – March 31, 2019

Investigations 210 calls

April 1, 2018 – March 31, 2019

Death & Serious Bodily Harm Reports

Since 2016, the Ontario Child Advocate has maintained an online reporting system for Death and Serious Bodily Harm (DSBH). The system lets service providers notify us easily and immediately of any incident of death or serious bodily harm to a child or youth who has sought or received services from a Children's Aid Society within 12 months of the incident.

Serious bodily harm includes any physical or psychological harm or injury that has a significant negative impact on a child's or youth's health, comfort and well-being. This includes:

- physical harm where injuries may require medical care
- incidents of a sexual nature, and
- a child or youth witnessing or experiencing an event likely to cause psychological harm, such as domestic or other violence

Death & Serious Bodily Harm

Since inception: 10,552 reports

(June 2016–November 7, 2018)

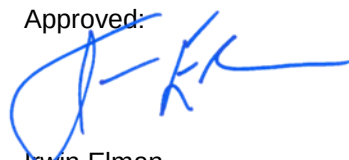
Financials

Statement of Expenditure for the Year Ended March 31, 2019

	Budget: For the year ended March 31, 2019 (Note 3 & 6) \$	Actual: For the year ended March 31, 2019 \$	Actual: For the year ended March 31, 2018 \$
Salaries & Wages	6,534,730	7,658,386	5,839,783
Employee Benefits (Note 4)	1,702,570	1,708,399	1,135,752
Transportation & Communication	960,600	784,908	1,074,878
Services	3,388,200	2,951,226	3,019,524
Supplies & Equipment	198,400	108,060	447,368
Total	12,784,500	13,210,979	11,517,305

Commitments (Note 5)
See accompanying notes to financial statement.

Approved:



Irwin Elman
Provincial Advocate for Children and Youth

1. Financial Statement

The Statement of expenditure for the year ending March 31, 2019 is an unaudited financial statement.

With the proclamation on May 1, 2019 of the *Restoring Trust, Transparency and Accountability Act, 2018*, the *Provincial Advocate for Children and Youth Act, 2007* will be repealed. On May 1, 2019, the *Ombudsman Act* is also amended and the Ombudsman's functions expand to include investigations respecting certain children and young persons as well as to include functions to be prescribed respecting services provided to certain children.

All assets and liabilities from the Ontario Child Advocate transfer to the Ontario Ombudsman on May 1, 2019.

2. Background

The *Provincial Advocate for Children and Youth Act, 2007* was enacted to provide an independent voice for children and youth. The Office of the Provincial Advocate for Children and Youth (Office) serves children and youth in state care and on the margins of state care through individual, systemic and policy advocacy. The Office is mandated to strive to be an exemplar in youth participation at all levels of its work. The Office is also mandated to take a special interest in children and youth with special needs, First Nations children and youth, children and youth in Ontario's schools for the Deaf and Blind, and Ontario's Demonstration schools.

3. Significant Accounting Policies

The Office, as part of the Legislative Assembly Fund, follows the modified cash basis of accounting, which allows an additional 30 days to pay for expenditures incurred during the year just ended. This differs from Canadian public sector accounting standards in that, for example, under the modified cash basis of accounting, liabilities incurred but unpaid within 30 days of the year just ended are not recorded until paid, and expenditures for assets such as computers and office furnishing are expensed in the year of acquisition rather than recorded as fixed assets and amortized over their useful lives.

4. Expenditures

Expenditures are paid out of monies appropriated by the Legislative Assembly of Ontario. These monies are part of the Legislative Assembly Fund.

Expenditures are reported net of recoverable sales tax, which is recovered by the Office of the Assembly on the Office's behalf.

The Office of the Assembly provides Financial and Human Resources services, without charge.

5. Employee Benefits

The Office's permanent employees (and non-permanent employees who elect to participate) participate in the Public Service Pension Fund (PSPF) which is a defined benefit pension for employees of the province and many provincial agencies. The Province of Ontario, which is the sole sponsor of the PSPF, determines the Office's annual payments to the fund. As the sponsor is responsible for ensuring that the pension fund is financially viable, any surpluses or unfunded liabilities arising from statutory actuarial funding valuations are not assets or obligations of the Office. The Office required annual payments of \$489,700 (2018: \$430,700) included under its employee benefits.

The cost of unused vacation and earned legislated severance entitlements are recorded in the Statement of Expenditure when paid.

The cost of post-retirement non-pension benefits is paid by the Province and is not included in the Statement of Expenditure.

6. Commitments

As of March 31, 2019, subsequent to year-end, the Office and the Ombudsman are determining what is to be transferred over to the Ontario Ombudsman. The Ontario Child Advocate has no future commitments past April 30, 2019, as all assets and liabilities transfer to the Ontario Ombudsman on May 1, 2019.

7. Budgeted Figures

The budget was prepared by the Office and approved by the Board of Internal Economy, an all-party legislative committee.

8. Bank Account

The Office holds funds in a bank account used to pay honorariums, if the Office is not able to receive funds on a timely basis from the Legislative Assembly Fund before any events. As at March 29, 2018 the bank balance was \$8,151.56 (FY 2018: \$7,830). The bank account was closed on April 23, 2019.

Appendix

Provincial Advocate
for Children & Youth

L'intervenant provincial
en faveur des enfants & des jeunes

Office of the Provincial Advocate
for Children and Youth

Submission to
Standing Committee on Finance and Economic Affairs
Bill 57: *Restoring Trust, Transparency and Accountability Act*,
2018

December 3, 2018

THE MANDATE OF ONTARIO CHILD ADVOCATE

The *Provincial Advocate for Children and Youth Act, 2007* created an independent voice for Ontario's children and youth in the care of, or receiving services from, the government. This includes services such as child welfare, youth justice, children's mental health, developmental services and children's treatment centers. The jurisdiction of the Ontario Child Advocate also extends to students of the provincial and demonstration residential schools for the deaf, blind, deaf-blind and severely learning disabled; court holding cells and transportation to and from court holding cells; First Nations and Metis children and youth; and children and youth with special needs.

Guided by its legislation, the Ontario Child Advocate has developed four distinct but interdependent advocacy functions. The Office is able to advocate on four levels simultaneously to ensure the voices of children and youth are heard and that they have opportunities to be their own advocates:

- individual rights advocacy
- systemic advocacy
- community development advocacy
- individual and systemic investigations

These are four distinct yet connected ways of approaching advocacy work and providing safeguards for children. This model of advocacy has been acknowledged globally and nationally as exemplary. It is built upon a foundation of 40 years of child advocacy by Ontario's provincial government. With the stroke of a pen, Bill 57 wipes out this history and model.

The Ontario Child Advocate answers thousands of calls, emails and messages every year from young people, their families, caregivers and other members of their support network. The Ontario Child Advocate's staff meets with children and youth in person, wherever possible, to listen to their concerns and let them know that they have a right to work with an advocate when they feel that the system is not working for them.

When the Ontario Child Advocate sees patterns or trends emerging in the calls that are received, the Office takes a close look at an issue through systemic advocacy. The Office brings together young people who have direct knowledge and experience with a particular issue to share their ideas and recommendations for change at the policy, funding, or service delivery level.

Community development advocacy has evolved out of broader dialogues with groups of young people and communities. The Ontario Child Advocate works closely with children and youth across the province to create opportunities for them to come together to share their experiences and map out possible solutions to issues and gaps in the system, making change real. Community development advocacy offers a process to address any barriers to equity that children, youth and communities may have in accessing resources and information. In this process, young people are able to become powerful self-advocates for improving children's services and resources in their own

communities — whether they are Crown Wards living in residential care, First Nations youth in fly-in communities, children and youth in the disability community, LBTGQ2S+ children and youth, or Black youth across the province. Young people through this Office have a voice.

Bill 57, if passed will repeal the mandate of the Ontario Child Advocate and transfer certain functions to the Office of the Ombudsman, making the Ombudsman the only independent safeguard for vulnerable children and youth in the children's services system.

Some of the children and youth in the Advocate's existing mandate are not mentioned in the legislative amendments that would transfer certain functions to the Ombudsman. There are clear placeholders found in Schedule 28 [at sections 7(1.1)(c), (1.3) and (1.4)] which would allow the Lieutenant Governor in Council to enact regulations to close any gaps:

7. Section 14 of the Act is amended by adding the following subsections

Same, children's services

- (1.1) In addition to the Ombudsman's function to conduct investigations under subsection (1), the Ombudsman may investigate,
[...]
- (c) any other matter concerning a child or young person who is seeking or receiving a service prescribed by regulations made under clause (1.4)(a) that is provided or funded under the *Child, Youth and Family Services Act, 2017*, with respect to the service.

Ombudsman, additional functions

- (1.3) In addition to the Ombudsman's functions under subsections (1) and (1.1), the Ombudsman may perform a function that is prescribed by regulations made under clause (1.4) (b) respecting,
- (a) services provided or funded under the *Child, Youth and Family Services Act, 2017*; and
- (b) services provided to children who are pupils of schools established or continued under section 13 of the *Education Act*.

Regulations

(1.4) The Lieutenant Governor in Council may make regulations,

- (a) prescribing services for the purposes of clause (1.1) (c);
- (b) prescribing functions for the purposes of subsection (1.3).

However, what remains concerning is there is no guarantee that regulations will be enacted in a timely manner, if at all. The young people in the mandate of the Ontario Child Advocate are extremely vulnerable. They are often away from their parents and home communities, and they are often left dependent on the service provider they have a complaint about to facilitate access to outside help. They may be seeking service and not receiving service, on their own or with their families. They may be involved in the youth justice system, but not in custody. They may be a First Nations child in their community reaching out. They will not be covered by the proposed legislation. Members must ensure that there is someone for them to call and that no gaps are left.

The Ontario Child Advocate ensures that the children in his mandate are not “out of sight, out of mind” and has made sure that they are seen, that their voices are heard, that their rights are fundamentally respected, and they have a place to call for help when they have a complaint about services they are receiving from the government.

For these children, safeguards are paramount. Numerous commissions of inquiry and inquests in Ontario have shown that the lived experience of children in the children’s service system is one of extreme vulnerability. Further, it is a well-established fact that the majority of children receiving government services are from the most marginalized groups in society: children with disabilities, children from racialized and ethnic minorities, LGBTQ2S+ youth, indigenous children, and children living in poverty.

Children do not choose to be in situations where they must be in receipt of government services. It is important for Members to understand that the mandate of the Ontario Child Advocate is to shine a light on dangerous gaps and risks that have existed, and continue to exist, in the current system. The key and indispensable strength of the Ontario Child Advocate is its independence from all branches of government, and the strong advocacy and investigative mandate that has been specifically guaranteed by statute.

The Advocate knows how vulnerable the children in his mandate are, and the kinds of tragedies that have occurred when children and youth became lost in the system, or fell through the cracks, or had nowhere to go and no-one to call.

The Ontario Child Advocate’s staff receive and respond 3,000 – 4,000 calls per year from children and young people who need immediate help, in real time, before their situation gets worse. Some examples of the types of calls that the Ontario Child Advocate receives are outlined in the Appendix “A” to this submission.

Bill 57 **does not** transfer the Ontario Child Advocate’s entire mandate to the Ombudsman. In fact, Bill 57 removes many key protective features and safeguards for

vulnerable children and youth, such as the legislated rights protection for children and the “on-the-ground” proactive and preventative advocacy work.

The experienced and trained staff at the Ontario Child Advocate know the complex systems of children’s services and residential care, legislation, regulations, policies, and standards that govern the lives of the children and youth in the Advocate’s mandate. The Members must appreciate and understand that if *The Provincial Advocate for Children and Youth Act, 2007* is repealed without necessary amendments and regulations being enacted under Section 28 of Bill 57, critical, pro-active, and necessary safeguards for children and youth will simply vanish.

The Ontario Child Advocate is instructed through legislation to be an exemplar in child and youth participation. Advocacy under the *Provincial Advocate for Children and Youth Act, 2007*, is defined as bringing forward the views and preferences of children and youth. The Office is to “partner” with children and youth to bring their concerns forward. This duty allows the Office to become a beacon for children and youth, in partnership with them, and encourages children and youth who are struggling or in danger to use their voice. At a time when the *Child, Youth and Family Service Act* entrenches a child’s right to participate in all decisions made about them, and requires all services to be delivered in a “child centred” manner, the destruction of the Office of the Provincial Advocate for Children and Youth is simply wrong.

We strongly recommend that Bill 57 be amended to remove the proposed repeal of the *Ontario Provincial Advocate for Children and Youth Act*.

The Role of the Ombudsman

It is difficult for the Child Advocate to recommend amendments to Bill 57, in relation to the proposed new powers of the Ombudsman. This situation is heartbreaking for the vulnerable children in Ontario. The crisis that has been created by Bill 57 is real. A train may be coming, and we ask the Committee and the Legislature to help pull vulnerable children off the tracks. The Members and government must realize that these decisions affect the most vulnerable children and youth in Ontario, children who are often hidden and have no voice. Therefore, the Members must ensure that all of the vulnerable children in the mandate of the Ontario Child Advocate are protected by the Ombudsman in his role.

We are aware that the Ombudsman is not and cannot be a Child Advocate.

If Schedule 28 of Bill 57 comes into force, the Advocate will no longer be able to provide advocacy to, or promote the rights of, the children and youth in his mandate. All calls will be directed to the Ombudsman and these calls will proceed as complaints within the Ombudsman’s framework and the functions set out in Schedule 28.

The Ombudsman will be required to assume some (but not all) of the functions of the Ontario Child Advocate. If Bill 57 comes into force, the Ombudsman will become the Officer left standing who can, through his role, protect the legislated rights and interests of children in Ontario. His role prevents him from being a Child Advocate, but he must

be given room and resources to protect the interests of children as best he can under his legislation.

For over 11 years, public and government respect for the independence of the Ontario Child Advocate has ensured that vulnerable children and youth in the Advocate's mandate have had a place to turn for help that is separate from the complex child welfare systems that they live in. The independence of the Ontario Child Advocate, its participation in inquests, and its public reports have been critical in bringing about significant and necessary change.

The role of the Ombudsman is an essential institution guaranteeing democracy, the rule of law, and the protection of the rights of citizens, including children and youth. We are very concerned about the provisions in Bill 57 that may have the effect of undermining the true independence of the Ombudsman. If the Ombudsman is to be the only remaining independent safeguard for children in Ontario, the independence of the Office itself must be respected.

In Bill 57, s. 4.7 permits the government to make regulations to prohibit the Ombudsman from investigating certain matters. This is directly contrary to the long-established role of the Ombudsman as an independent watchdog, and allows the possibility for safeguards for children and youth to be eroded by government regulation.

If the Ombudsman is required to take over the functions of the Ontario Child Advocate, then it is imperative that the Ombudsman be completely independent of the executive branch of government, and is able to respond to complaints and investigate without fear of reprisal or suspension if a particular government is displeased with any finding.

The transfer of functions to the Ombudsman also carries a serious risk that oversight over the most vulnerable children in the Province will be combined with all other issues that come to the Ombudsman via their usual call and complaints processes; for example a child in care and a person complaining about a municipal by-law could be calling the same complaint intake line. Therefore, we strongly suggest that the Ombudsman be given the resources to have the specialized expertise that will be required within the Ombudsman's Office in order to fulfill this important aspect of Ombudsman's role.

Children in receipt of government services are extremely vulnerable, and their rights and any complaints mechanisms that they are supposed to be able to access are firmly entrenched in the *Child, Youth and Family Services Act, 2017* ("CYFSA"). In addition, children and youth have a right in the CYFSA to meaningfully participate in any decision made about them across all services. The Ombudsman will be responsible for ensuring, through his role, that the rights of children and youth are respected, and protected.

Without the Ombudsman having sufficient resources to address the complexity, context, and systemic processes impacting the lives of these vulnerable children, the effect of the transfer of function to the Ombudsman may dilute necessary protection and oversight for the children in the Advocate's mandate.

It is obvious that for the children and youth living in precarious situations, as is the case for the young people who call the Ontario Child Advocate, it takes a great deal of courage to register a complaint. The Ombudsman, in assuming new functions, must be given room and resources through legislation to create early resolution processes that meet the specific needs of the children who are calling for help.

In addition to the investigation power that is being transferred, the Ombudsman will have the ability to refer complaints to early resolution. Early resolution and investigations of complaints involving children and youth in complex situations can be best addressed through a well-resourced approach within the Ombudsman's office that covers all of the children and youth currently in the mandate of the Ontario Child Advocate. The requirement under the *CYFSA* that all service providers must inform children and youth receiving children's services of the existence of the Ombudsman and their right to call and make a complaint means that the Ombudsman will be receiving as many, if not more calls, as the Ontario Child Advocate does (approximately 3,000 – 4,000 per year).

The Ombudsman must be given the necessary resources to effectively fulfill his additional functions. This is obvious.

If the *Provincial Advocate for Children and Youth Act, 2007* is repealed, we submit that there should be four (4) specific amendments to Schedule 28 to ensure that the Ombudsman will be able to become an effective independent safeguard for Ontario's vulnerable children.

As noted above, many of these proposed amendments are already contemplated in Bill 57 as matters that can be prescribed by regulation under the *Ombudsman Act* to fill any gaps created by the repeal of the *Provincial Advocate for Children and Youth Act, 2007*.

We suggest that legislative amendments, as set out below, must be made and not left to regulation. The proposed legislative amendments will clarify and strengthen the role of the Ombudsman as the only independent safeguard for vulnerable children and youth in the children's services sector. These proposed amendments will ensure that ***all*** children and youth currently within the mandate of the Ontario Child Advocate are transferred to the mandate of the Ombudsman and will have "someone to call" when they need help and no-one will listen.

RECOMMENDATIONS

Recommendation 1

The Provincial Advocate for Children and Youth Act, 2007 should not be repealed.

Recommendation 2

Schedule 28, s 7(1.1)(c) should be amended to read:

- (1.1) In addition to the Ombudsman's function to conduct investigations under subsection (1), the Ombudsman may investigate,
[...]
- (c) any other matter concerning a child or young person who is seeking or receiving services that are provided or funded under the *Child, Youth and Family Services Act, 2017* or provided under the authority of a license under that Act;

Recommendation 3

Schedule 28, s. 7(1.3) should be amended to read:

- (1.3) In addition to the Ombudsman's functions under subsection (1) and (1.1) [investigations], the Ombudsman may receive, and attempt to resolve complaints, respecting:
 - (a) services provided or funded under the *Child, Youth and Family Services Act, 2017*; and
 - (b) services provided to children who are pupils of schools established or continued under section 13 of the *Education Act*.
 - (c) nothing in this Act prevents the Ombudsman from acting on behalf of a child to resolve any complaint using informal methods or to assist a child with accessing any right of appeal or objection.

Recommendation 4

Schedule 28, s. 7 (4.7) [regulations to be prescribed about what Ombudsman shall not investigate] should be removed.

Recommendation 5

Schedule 28, s. 4 [removal or suspension of the Ombudsman] should be removed.

Appendix A

Many calls to the Ontario Child Advocate involve cases where children are in danger of falling through the cracks in a fragmented and complex children's services system. To illustrate the importance of a meaningful and independent safeguard for vulnerable young people in the children's services system, we provide the following examples of the types of calls that the Ontario Child Advocate receives:

Example 1

A young woman called the Ontario Child Advocate after being restrained by male staff, in spite of a treatment plan indicating that she had experienced sexual trauma and any hands-on restraint must be done by female staff. The young woman did not feel safe enough to complain internally and felt that she could not express her concerns to the facility without feeling shame. She wanted the help of the Ontario Child Advocate's staff to speak on her behalf. The Ontario Child Advocate's staff was able to work with the facility to ensure that appropriate approaches were used for her care. The young person felt heard, and was ultimately more safe in the group home environment.

Example 2

A youth with long-standing complex mental health and behavioural challenges had exhausted all of the local resources and the family was under severe stress. The local planning agency was not able to offer any further supports and suggested placement with a Children's Aid society as the only option. The Ontario Child Advocate's staff contacted all of the services, planners and the Ministry and the youth was placed in a mental health service that offered stabilization and assessment and averted an unnecessary placement in CAS care.

Example 3

A family raised concerns when a young person with serious mental health issues was provided a placement with an agency that had no mental health supports. The Ontario Child Advocate worked with the planning agency, Ministry, and service providers to find an appropriate placement with on-site mental health supports that matched the clinical recommendations for the young person. Without this intervention, the child would have experienced a significant risk of deterioration in his mental health.

Example 4

The family of a 12 year-old developmentally delayed youth called the Ontario Child Advocate because he was being injured at school and not being provided with the supports identified on his Individual Education Plan. The Ontario Child Advocate's staff worked with the child and the school in order to negotiate the necessary additional

support. The young person was educated about his rights and is now able to speak up for himself to ensure that his voice is heard

Example 5

A hospital called the Ontario Child Advocate about a 2 year old with a tracheotomy whom it wanted to release from hospital into the care of a Children's Aid Society. The Children's Aid Society did not feel that the child met the criteria for apprehension. The mother had three other children at home who were under the age of seven, was overwhelmed, and had few supports. The Ontario Child Advocate's staff were able to assist in secure funding for transportation and child care to support the mother. Without this early resolution, the child would have been discharged from the hospital to CAS care.

Example 6

A young woman with a developmental delay called the Ontario Child Advocate to complain about the situation in her group home. The Ontario Child Advocate's staff called Children's Aid Society and discovered that they did not know about some of the issues in the group home. With the involvement of the Ontario Child Advocate's staff, the young person's complaints were able to be resolved through collaboration with the Children's Aid Society, the developmental services sector, and service resolution processes. Ultimately the young person was able to move out of CAS care and into a complex special needs placement which was best able to meet her needs.

Example 7

A youth in care with a background of trauma called the Ontario Child Advocate when he was moved to a new placement that was hours away from home and that he did not like. Although he had been a Crown Ward for many years, he did not understand the right to ask for a review of the placement by the Residential Placement Advisory Committee. With support from the Ontario Child Advocate staff, he completed the review and then made a formal complaint to the Child and Family Services Review Board. Following a formal hearing, the Children's Aid Society agreed to provide a different placement much closer to home, where he could resume regular visits with his family. Without the support of Ontario Child Advocate staff to assist him through the processes, he likely would have acted out his frustrations, resulting in involvement with the youth justice system.

Example 8:

A 12-year-old girl called the Ontario Child Advocate because she said that she wanted access to recreational activities and what she referred to as, "a normal life like any other 12 year old." The Ontario Child Advocate's staff reviewed her complaints about the

group home and some of the issues raised were very troubling. The Ontario Child Advocate's staff asked the Ministry to complete an unannounced visit at the residence which confirmed many of the issues raised in the young person's complaint. Even then, the situation was only resolved for the young person through the ongoing involvement of the Ontario Child Advocate's staff.

Example 9:

A 10-year-old boy called the Ontario Child Advocate to complain of numerous restraints at his group home. Preliminary information obtained by the Ontario Child Advocate indicated that he had been subjected to 108 physical restraints by staff over a 13-month period. Although physical restraints must be documented in Serious Occurrence Reports and filed with both the Ministry of Children, Youth and Community Services ("Ministry") and the placing Children's Aid Society ("CAS"), this high number of restraints did not generate any concern at either the Ministry or the CAS. An analysis by the Ontario Child Advocate revealed that in more than half of the incidents there was no documentation indicating that the young person posed an immediate risk of harm to himself or others. Imminent risk of harm is the legal justification required before staff may use physical force with a young person.

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