

Fair Schools

- Respect*
- Listening*
- Advocacy*
- Participation*
- Inclusion*

Ombudsman

PROVINCE OF BRITISH COLUMBIA

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FAIR SCHOOLS

Open Letter from the Ombudsman May 1995

In November 1992 the provincial government proclaimed the section of the *Ombudsman Act* that extended my jurisdiction to investigate complaints about public schools and school boards. Until that time, it had been difficult to present an integrated response to complaints about all public services to children and youth. Proclamation was a significant step towards ensuring that the administration of public education to children is fair.

When government announced the extension of my authority to cover public schools, I expressed optimism about working with students, parents, advocates, teachers, administrators, superintendents and school trustees. I have not been disappointed. Although there are undeniably problems and complex issues within our public school system, I believe that many creative solutions have been and continue to be found. I am heartened by those who listen first and foremost to the students they serve, by those adults who model fair practice for others.

Public schools are the ideal place for our children to learn about democracy. We adults have the opportunity to demonstrate to children by example that dignity and respect are the cornerstones of any fair and equitable system. Schools are the logical place for children to learn how to question authority, how to solve problems and how to advocate for themselves and others who need support. We need to encourage children to be participating members of their school communities.

This report reflects the experiences of my staff in the first two years of investigating the complaints and inquiries we have received about public school services. As with other reports emanating from my Office, I hope that this report will serve as inspiration to improve how we meet the challenge of being fair to our children. I trust that it will generate discussion, perhaps debate, among those of you who care about the educational experiences of our

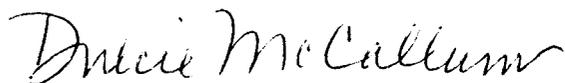
children. I trust it will affirm the appropriateness of the actions taken by those of you who are committed to fair practices for children, and encourage and empower those of you in positions to ensure that all children are treated fairly.

The schedule of the *Ombudsman Act* does not include independent schools. This exclusion was a cause of some concern in that students attending independent schools would effectively be denied the opportunity to make a complaint to the Ombudsman's Office when they believed they were treated unfairly. It seemed unfair that students enrolled in an independent school not be entitled to pursue the same remedy for redress as their peers in the public school system.

To resolve this inequity, my staff met with representatives from the Ministry of Education to develop a protocol. It was agreed that a student or an advocate of a student attending an independent school who has a concern about the fairness of a decision or action can take the concern to the Office of the Inspector of Independent Schools. The Inspector will investigate the concern. If the student is not satisfied with the response from the Inspector, she or he can contact the Ombudsman who will review the Inspector's investigation. This protocol ensures that students attending independent schools have access to review mechanisms. The Office of the Inspector of Independent Schools can be reached at 356-2508 from Victoria or toll free from anywhere in the province by first dialing Enquiry BC at 1-800-663-7867 and asking to be transferred to 356-2508.

I submit this report to the Legislature, and to all school board members and officials in the hope it will assist those working to educate our young people to be fair, just and equitable.

Yours very truly,



Dulcie McCallum
Ombudsman for the Province of B.C.

PRINCIPLES OF THIS REPORT

1. All children and youth have the right to be valued and to be treated with respect and dignity.
2. All children and youth have the right to a fair and equitable education.
3. All children and youth have the right to receive appropriate advocacy supports.
4. All children and youth have the right to participate in decisions that affect them, to express their views and to have them carefully considered.
5. All children and youth have the right to the benefit of the fundamental human rights provided in the *United Nations Convention on the Rights of the Child*.
6. All children and youth have the right to a safe physical and emotional environment.
7. All children and youth have the right to receive appropriate programs from appropriately trained and properly motivated staff.
8. All children and youth should have the opportunity to access publicly funded services in their home communities or as close to their home as possible.

I. THE OMBUDSMAN'S ROLE

The Ombudsman is an independent reviewer of fairness for British Columbians. The Office of the Ombudsman was established in 1979 to investigate complaints from residents of British Columbia who believe that they have been treated unfairly by the provincial government or its related agencies. In November 1992 the Ombudsman was given the authority to investigate complaints about schools and school boards.

The Ombudsman is obviously unable to investigate all complaints herself. She has a staff of trained investigators to whom she delegates her authority. Complaints involving children and youth are investigated by members of the Ombudsman's Child and Youth Team. In addition to school-related issues, the team investigates complaints about programs, resources and services for children and youth provided by a number of authorities.

Young people may contact the Ombudsman themselves if they feel they have been treated unfairly, or may have someone act on their behalf, most often a parent. But teachers, school counsellors, community professionals, community advocates or other concerned persons can act on behalf of a student or parent. All calls are received in strict confidence to protect the anonymity of the caller. The caller's identity is disclosed only with his or her permission and only if it is necessary to resolve the matter for the child or youth. Investigations are usually conducted by telephone in a fairly informal manner. The focus of the investigation is not to find fault but to determine fair process and find a resolution that is reasonable for all parties.

In addition to investigating individual complaints, the Ombudsman will make special reports to the Legislature or comment publicly when she considers it to be in the interest of an individual or an authority. Over the past several years the Office has released a number of public reports and papers about systemic issues involving children (for a complete list please see Appendix A).

II. INTRODUCTION

Since proclamation of schools and school boards the Ombudsman has been learning about the division of responsibilities in the province's education system. The system includes students, parents, teachers, support personnel, non-teaching staff administrators, elected officials and the Ministry of Education. The public is legitimately confused and unsure of who is accountable for what. Approximately six hundred thousand students from kindergarten to grade 12 attend 1600 schools in 75 different school districts. The Ministry of Education provided the school districts across British Columbia with block funding of close to \$3.3 billion for the 1994-95 school year.

This complex system is governed by a provincial statute, the *School Act*. The *School Act* is supported by numerous Regulations and Orders in Council. Order in Council No. 1280/89 describes the school system's mandate:

The purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills, and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy. (Please see Appendix B for a statement of education policy for British Columbia.)

This report is a summary of our experience in investigating complaints about the public school system since its proclamation as an authority. The observations and suggestions contained in this paper are not definitive and do not touch on all problems in B.C.'s school districts. They are a result of interviews and investigations carried out by the Ombudsman and her staff, and summarize what we have learned from approximately 500 complaints we have received. These complaints cover a few broad categories: lack of services to meet the individual needs of students; transportation; exclusions, suspensions and expulsions. Our observations might be a starting point for discussion, amendments or action by ministry officials, administrators, teachers, staff and students.

AN INVESTIGATION INTO COMPLAINTS FROM A SCHOOL DISTRICT

In 1993, the Ombudsman's Office received complaints about the management and operation of a school district. Three events seem to have caused the most concern:

1. The board terminated some teaching positions mid-year.
2. Teachers rejected the board's suggestion to work three days into the Christmas break, resulting in a labour relations dispute.
3. Students protested when the board reduced the number of days in the spring break. Some were arrested.

Ombudsman staff from the Child and Youth Team investigated the complaints. The first goal of the investigation was to make sure that those in positions of authority were hearing the concerns of students and taking them seriously. The second was to be sure that all parties were honouring the principles of fairness in their dealings with one another. The focus on students was prompted by a review of the complaints received and the discovery that most groups from the school district had contacted the Ombudsman, with the notable exception of students.

With the assistance of the District Superintendent, Ombudsman staff set up interviews with students in two schools. They also met with representatives of all concerned groups: the District Parent Advisory Council; the Canadian Union of Public Employees local, comprising approximately 30% of the district's employees; the District Teachers' Association; district administration; principals and vice principals; the school board; community organizations and individuals.

The strengths of the school district were readily apparent to Ombudsman staff. These strengths held the best hope for resolving the problems and bringing

about positive change. Before any of the problems mentioned above became apparent, the school district had already taken some important steps:

- they appointed a task force to plan for the next decade
- they involved key personnel in a dispute resolution seminar
- they developed a detailed strategic plan
- they hired a consultant to advise on developing a “Participative Management Style”
- they appointed a Participative Management Team to implement the consultant’s report.

Although these were all important steps, they had not been in place long enough to be effective in changing things in the district.

When the Ombudsman staff met with the various groups, they found a high degree of consensus on many points. People were concerned about:

- conflict and lack of trust among the educational authorities, including a breakdown in relationships among the school trustees
- protracted contract negotiations
- lack of clarity about respective roles
- their apparent powerlessness to change things.

Those we spoke to believed that local tensions were related to provincial problems such as lack of resources and the challenge of integrating “special needs” students into regular classes. They also believed that information sharing and communication needed to improve.

When the investigation was completed, the Ombudsman noted that a number of the issues that had been raised had province-wide application. She therefore decided to broaden the scope of her report on this specific investigation to provide a review of her Office’s experience with British Columbia’s public schools and school boards since she received jurisdiction. The Ombudsman believes that such a review will reinforce initiatives to safeguard the rights of students to an education and the right of all partner groups to a voice in providing educational services.

Fair Schools

All authorities in the district are to be commended for their support and co-operation during the investigation. Although tensions and conflicts existed, everyone who participated was open, candid and sincere in providing the Ombudsman with valuable information and insights. Students were especially willing, eager and thoughtful participants.

III. ROLE CLARIFICATION AND ACCOUNTABILITY

The Ombudsman's concern is with fairness. To a great extent, the way decisions are made determines whether a system is fair or not. Although decisions are being made daily at every level of the education system, these must be within the guidelines set by the legislature in its statutes or Acts.

Briefly, responsibilities for the education of the children of British Columbia are divided as follows:

A. MINISTER OF EDUCATION

- an elected member of the legislature appointed to the Cabinet by the provincial government
- presides over the Ministry of Education
- presents to the legislature amendments or changes to the *School Act*

B. MINISTRY OF EDUCATION

- authority and responsibilities outlined by the *School Act*
- establishes funding levels for school districts
- sets provincial policy for public schools and for independent schools
- has overall responsibility for:
 - provincial curriculum
 - requirements for graduation
 - establishment of evaluation and assessments
 - correspondence programs
 - use of student records
 - approval of property disposition and capital expenditures
 - the number of days in the public school year calendar
 - other matters necessary to administer the *School Act* and the *Independent School Act*

The Ministry of Education provides overall educational leadership in British Columbia. However, contrary to the expectations of the general public, the minister's powers to intervene in school districts are restricted, given the autonomy school boards have under current legislation.

C. BRITISH COLUMBIA COLLEGE OF TEACHERS

- guided by the *Teaching Profession Act*
- establishes standards and qualifications for certification of teachers and other professionals in the public school system
- a self-regulating professional body with power to discipline its members, to suspend, withdraw or withhold certification.

In public schools, all educational staff must be members in good standing of the B.C. College of Teachers. The college is among the self-regulating professional bodies over which the Ombudsman was given jurisdiction under the *Ombudsman Act* on April 1, 1993.

D. SCHOOL BOARD

- powers and responsibilities defined by the *School Act*
- made up of trustees elected in municipal or civic elections
- an autonomous body accountable to its constituents
- establishes policy for the operation and administration of the schools within the district as well as the management of school property
- employs teachers, administrators and non-teaching staff
- establishes regulations to govern functioning of students, staff and schools
- most boards belong to the B.C. School Trustees Association.

Part 4 of the *School Act* provides the mechanism for establishing school boards, the process for electing trustees and the requirements for holding office. The *Act* gives the Minister of Education the authority to determine the number of trustees that can be elected within a particular district.

The school board is responsible for ensuring that decision making at all levels within the district embodies all the principles of fairness. The board also is ultimately responsible for protecting the fundamental right of every child and youth to be treated with dignity and respect.

School trustees often must reconcile competing interests. For example:

1. Parents often come to the school board advocating for their child. The board must balance the needs of a child against the needs of the whole school population. Guidelines for parent advocacy would be helpful for both parents and trustees.
2. The budget for each district is set by the provincial government. The task of the board is to decide how to allocate the money in the best interests of all concerned, and in accordance with arbitrated contract settlements. Making these decisions, in consultation with all parties concerned, is often a long and difficult process.
3. In this time of limited resources, trustees must consider whether or not to accept gifts from corporations, since accepting the gifts includes advertising a corporation's products.
4. The school population across the province is highly diversified and changing. Trustees, as well as teachers and administrators, are challenged to adapt the school environment to a more varied group of students.

E. DISTRICT SUPERINTENDENT

- acts as Chief Executive Officer of the district
- appointed by the School Board
- supervises and evaluates educational staff and programs, and operation of schools within the district
- accountable to the School Board
- may be a member of the B.C. Superintendents' Association.

If the school board charts the course of education, it is the superintendent who pilots the ship. The superintendent is ultimately responsible for the administration of the school district's affairs. When the Ombudsman receives a complaint about a school district's decision, she will most often contact the Superintendent's office first to give official notice.

Part of the challenge for superintendents today is to examine their management styles to ensure acceptance of and compatibility with power sharing, participative approaches and a respect for the principles of administrative fairness.

F. PRINCIPAL

- responsible for the overall supervision and management of a school
- meets with the Parent Advisory Council
- disciplines students
- advises the superintendent on discipline of staff
- often the first line of response to a complaint about a school
- a member in good standing of the B.C. College of Teachers.

VICE PRINCIPAL

- assists the principal with administrative duties
- frequently teaches
- a member in good standing of the B.C. College of Teachers
- principals and vice principals may be members of the B.C. Principals' Association
- Both positions are governed by *School Act* regulations.

Principals and Vice Principals set the tone and vision for their schools. Many also teach side by side with teachers.

Principals speak of role conflict and confusion since they have been designated middle management. The relationship between teachers and principals shifted as a result of changes implemented in 1987, when teachers obtained the right to bargain. Some principals consider that the collective agreement "rule book" dictates how schools are run. They feel that provincial education policy, the *School Act* and school board guidelines give them a better understanding of the working partnership between principal and staff, each with clearly defined and understood roles.

Many districts have shifted to a more participative style of management, one that demands more sharing of power, more consultation, more working as a team. Enthusiastic as some principals are about the new style, many have found the associated changes difficult and challenging.

Principals often take on the role of mediators in attempting to resolve problems that arise between students and teachers, or parents and teachers, or even between staff and senior management. In many instances the principal acts as the “on-site ombudsperson” within the school, receiving complaints, investigating matters to establish the facts and seeking to achieve a fair resolution.

Many principals want to involve parents in the school, but are uncertain how to do so effectively. Many are seeking and finding creative ways to meet the challenges of operating schools in the 90s. Often principals have expressed feeling isolated in trying to deal with these challenges.

G. TEACHERS

- duties are outlined in the *School Act*
- front line service providers
- instruct students and provide other educational services
- evaluate and report on students’ development and progress
- maintain student records
- act as advisors to student councils, clubs, sport teams, and other extracurricular activities
- members in good standing of the B.C. College of Teachers
- members of local collective bargaining units
- may be members of the B.C. Teachers’ Federation, the provincial union.

In addition to their being educators, teachers are employees of their local school board. They are professionals licensed under statute by the College of Teachers, and also members of the B.C. Teacher’s Federation labour union. They are governed by the *Teaching Profession Act* and the *School Act*, and also by collective agreements negotiated between union and the school board.

The general public often does not have a clear understanding of or tolerance for these seemingly conflicting roles for teachers.

Teachers are constantly challenged to find ways of involving others, especially parents, in the classroom and in the school.

Students have told us that a good teacher is someone who:

- treats you fairly
- listens to you
- tells you why they're doing things
- doesn't tease you in front of the class
- doesn't yell at you
- likes to have fun.

Teachers are faced with significant challenges on a daily basis:

- teaching more children from immigrant backgrounds not so at ease with the English language
- concerns about sexism and prejudice in dealing with children, and in teaching materials, e.g. studies about girls' self-esteem declining in junior and senior high school
- dealing with children and parents from much more varied racial and religious backgrounds
- integrating more "special needs" children into regular classrooms
- taking on role of social worker or counsellor with troubled children, or children from disruptive homes
- increasing numbers of children from families living below the poverty line, hungry and unable to function well in school.

Teachers' aides, learning assistance teachers, occupational, physio, speech, and audiology therapists, school and district counsellors, psychologists and others are part of the "Student Support Services" team that helps make it possible for children to benefit from their classroom experience. Some children need additional help to participate successfully in school, and often undiagnosed physical problems, such as hearing loss, can hamper their learning. Teachers

rely on the specialized skills of support staff to meet the needs of the children in their classrooms and help them learn effectively.

Support services personnel are employees of the school district and may be members of the teachers' union, the Canadian Union of Public Employees, or a professional association.

The Ombudsman frequently hears that there are not enough support staff available to meet the needs of each child in the classroom. Because of the demands on their time, those who are employed are not able to give the attention to each child that parents and teachers believe would be of most benefit.

H. PARENTS

- primary care givers and natural advocates for their children
- defined by the *School Act* as the parents or guardians of a student or the persons legally entitled to custody or who usually have care of the student
- authorized by the *School Act* to form Parent Advisory Councils (PACs) at the school, district and provincial levels
- through the Parent Advisory Council may advise the school board, principal and staff on matters relating to the school.

Parents continue to be the primary advocates for children in the public school system. They are no longer prepared to restrict their activities to fund raising. The majority of the complaints the Ombudsman receives about schools come from parents with concerns about the quality of their children's education and the treatment they and their loved ones receive within the school system. The Ombudsman supports parental involvement in schools at the local, district and provincial level.

One of the ways parents can be involved in schools is through Parent Advisory Councils. The Ombudsman is encouraged by those school districts that invite greater participation and involvement of parents through PACs. Some schools have provided space for councils to meet, some are helping parents learn to be advocates for students. We believe that British Columbia is one of few

jurisdictions to include the role of parent advisors in its *School Act*. In one state in the United States, the law requires employers to permit parents to be absent with pay for up to four hours per year to attend their child's school.

The *School Act* for Prince Edward Island presents a model for parental involvement in the school. The functions of the Parent Advisory Council listed in that *Act* include:

- advising the school principal on such things as curriculum, scheduling, discipline, extracurricular activities and fund-raising
- providing a channel of communication between the school and the community, and building awareness among parents of school programs, activities and issues
- participating in the development of school improvement plans
- advising, where required by the school board, on the hiring of school staff.

I. STUDENTS

Students are the focus of the whole education system and the primary recipients of the service. Every position in the system exists to serve students, to provide them with an education. They are the reason for the existence of the system.

Teachers and administrators can develop structures, at elementary as well as secondary levels, so that students can express their views and participate in decisions that affect them. Students are empowered when adults solicit their opinions and listen to them with respect.

Parent Advisory Councils, which provide valuable support to schools and districts across the province, are authorized and supported by the *School Act*. Student Councils, however, exist only at the discretion of principals. They are not mentioned in the *School Act*. Principals and school boards do not routinely consult student councils on matters of school or district policy. Student councils, where they do exist, often have no process to involve or inform the rest of the student body in any meaningful way. They have no real authority or clear function.

A system that professes to be a student-centered partnership will provide an official voice for students. Strengthened student councils would provide that voice. The councils need to be supported by legislation, provided with funds, and advised and encouraged by principals and staff. The British Columbia School Trustees Association, at its 1994 Annual General Meeting, approved the motion:

That the BCSTA urge the government, in consultation with students and other education partners, to reconsider the *School Act* with a view to further entrenching the rights and obligations of students by establishing student advisory councils.

The school can effectively teach young people about democratic principles and processes, in line with Article 12 of the *United Nations Convention on the Rights of the Child*.

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Ombudsman's conversations with students, and a review of the complaints from students across the province show that a number of students do not feel welcomed or comfortable at school; they do not feel safe; they do not like going to school; and they do not think that their education is useful to them now, nor will be in the future. These concerns cannot be addressed without the direct input or involvement of students. Children and youth must be encouraged to voice their concerns through an appropriate and constructive process.

IV. KEY ISSUES THAT IMPACT ON THE LIVES OF STUDENTS

*Children and youth are people.
All persons have the right to be treated with respect and dignity.*

In keeping with this principle we highlight the following concerns that have come to our attention as a result of our discussions with schools since 1992.

A. ADVOCACY

The Ombudsman defines child and youth advocacy as:

activities undertaken by self or others intended to ensure that the rights, interests and viewpoints of children and youth are carefully considered and fairly represented in all matters that affect them. These advocacy efforts are particularly in relation to public policies and services and are directed at both individual and systemic issues. (Advocacy For Children and Youth In British Columbia: An Ombudsman Discussion Paper. October 29, 1993.) Please see Appendices C and D.

Advocacy emerged as a major concern from discussions with students and a review of complaints received by the Ombudsman's Office. Because children are in a powerless position, some adults consider that they do not need to be consulted or listened to. As a result, children are often unable to represent their interests clearly and strongly to a willing listener. Most young people *can* advocate for themselves, and schools can assist students by teaching them the skills of self-advocacy and inviting their participation.

When young people have difficulty expressing their views, for whatever reason, especially when decisions are being made that affect them, adults can help to advocate. In particular, in any kind of administrative hearing or appeal

procedure, young people have a right to be accompanied by an advocate or other support person at every step.

Often peers are excellent advocates, but parents, family friends, teachers and other professionals can be called on as well. The advocate's role is to ensure that the child's point of view is heard and considered regardless of the child's age or abilities. School authorities are responsible for informing children of their right to have an advocate. Parents have told us they often feel that their efforts to advocate for their children are neither welcome nor acted upon and may even be discouraged.

B. COMMUNITY INVOLVEMENT IN SCHOOLS AND EDUCATION

A healthy system is an open and inclusive system. The 1988 Sullivan Royal Commission on Education described the school as the "hub of the community." Many communities see the school as a closed system, with its facilities unavailable to the public each weekend and for many weeks during the year. In turn, schools are often frustrated at the lack of support from other agencies. A child-centered system that is the hub of the community will provide a focus for all child-serving groups to co-ordinate their services.

Parents, students, community groups and service providers for youth, together with school officials, can identify practical and creative ways to use school facilities outside of school hours. School buildings can be used to provide social and recreational services for youth on evenings and weekends--an alternative to "hanging out," playing fields can be used for community sports, and classrooms for continuing education programs. Making the school a more integral part of the community for children and youth requires a commitment from school boards and administrators, as well as parents and teachers. In a time of shrinking resources everyone would benefit from integrating services and making better use of expensive public facilities. Part of promoting fairness is encouraging all participants in a system to co-operate.

C. INCLUSIVE EDUCATION

Most school districts struggle with the question of how to provide the range of services necessary to meet the varied needs of all children. These are not exclusively children with visible disabilities. The teachers and parents Ombudsman staff have spoken to are most concerned about students with behavioral problems. The Ombudsman's Office has been told of six-, seven- and eight-year-old children with "behaviour problems" being suspended from schools. The Ombudsman has also heard from parents whose children have been diagnosed as having Attention Deficit Disorder, Fetal Alcohol Syndrome/Effect, or other emotional difficulties. Often these conditions result in disruptive behaviours and exclusion from classes or from the school. These parents are finding it difficult to obtain suitable educational services for their children.

All children, regardless of their individual needs, have a right to an education. In a sense, every child has special needs. Rather than speaking of integrating "special needs" students into regular classrooms, we could more appropriately speak of "inclusive" schools. Such schools accept all children seeking an education and adapt programs to fit their age, ability and special circumstances. The majority of parents and educators in contact with the Ombudsman's Office support inclusive schools. But, from our experience, inadequate financial resources and support services or inappropriately designed systems often are barriers to total inclusion. Teachers and administrators mention other barriers:

Increased pressure from workload:

Teachers report feeling overloaded and pressured when they are expected to include all children in their classrooms, and accommodate a wide range of learning needs without sufficient supports.

Insufficient training:

Teachers have frequently told Ombudsman staff that their training does not adequately equip them to deal with children who have extraordinary needs. Many also feel ill-prepared to teach alternative dispute resolution procedures to their students.

Lack of integrated services:

Children with unique needs often require additional help in other areas of their lives in order to learn effectively. Since no one ministry in B.C. is responsible for services to children, those attempting to include all children in regular classes must attempt to co-ordinate multi-disciplinary and cross-ministry support. Teachers across B.C. speak of lack of support from social service and mental health professionals in their communities. This lack may be the result of structural deficiencies within systems rather than an attitudinal problem. The Ombudsman has frequently recommended that public services to children be integrated. (See the 1990 Ombudsman *Public Report No. 22*). The newly created position of Child Advocate, as an Officer of the Legislature, given an appropriate mandate, may begin to bring about this integration.

Many districts are finding creative ways to serve the needs of all children, including those who are exceptionally gifted or talented. Often the most workable plans are a result of parents, teachers and community agencies working together. The Ombudsman recognizes and supports these efforts.

In April 1993, the Minister of Education announced a comprehensive review of "special" education that, in her words, "...will help ensure that services to students with special needs are delivered in an effective, coordinated manner." She further stated that "our schools must provide an education that meets the needs of all students, including students with special needs."

The minister set up a Special Education Advisory Committee, made up of "education partners, parents and interest groups." The Ombudsman applauds this commitment by the ministry. She is pleased to note the inclusion of representatives from the Ministries of Health; Social Services; Advanced Education, Training and Technology; and Aboriginal Affairs.

The views of students, and especially those characterized as having "special needs," are critical if the review is to be truly comprehensive. Young people who have recently dropped out of school are particularly suited to give reasons why the education system did not work for them.

The Ombudsman looks forward to the final report on the committee's work. She suggests that they look for more inclusive terminology for students with unique, identifiable educational needs, and for the name of the policy itself.

D. STUDENTS' ACCESS TO APPEAL

In a series of meetings between Ombudsman staff and students, few students were aware that they were entitled to appeal a school decision, or that complaint resolution procedures existed within both the school and the district. Further investigation showed that this lack of knowledge was common among students in many districts. In addition, in almost all cases, students said that they expected retaliation in some form if they complained that a decision concerning them had been unfair. These perceptions, along with insufficient knowledge, contribute to the powerlessness many students feel.

Failure to provide young people with clear information about the avenues available to express their opinions - including possible dissent - can lead to apathy, resentment and, at times, inappropriate expression of grievances.

Section 11 of the *School Act* provides for an appeal procedure for students and parents. The *School Act* states:

- s. 11(2) **Where a decision of an employee of a board ["decision" includes the failure of an employee to make a decision, s.11(1)] significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.**
- (3) **For the purpose of hearing appeals under this section, a board shall, by bylaw, establish an appeal procedure.**
- (6) **A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section and the decision of the board is final.**

However, the *Ombudsman Act* states:

- s.10(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that**
(a) a decision, recommendation or act is final;....

The responsibility of the Ombudsman is to ensure that processes are fair. Therefore, under exceptional circumstances, the Ombudsman will review a decision of a school board if the following criteria apply and the board declines to re-hear the appeal:

- a. new information regarding the matter under appeal has arisen; and/or
- b. it can be clearly shown that the decision was inconsistent with the principles of administrative fairness and natural justice.

Although school administrators and senior officials are not required to be part of an investigation pending an appeal, they have, without exception, supported the efforts of this Office to resolve complaints in a non-adversarial manner.

In the spring of 1993 the Ombudsman circulated a draft paper entitled, **A Guide for School Board Appeal Procedures**. The draft was intended to inform School Boards and assist them in developing the appeal procedure required by the *School Act*. Many groups, including students and parents, responded to the draft. The guidelines envision an environment in which individuals receive the dignity and respect they are entitled to, and that ensures the right to fair administrative processes. They make it clear that an appeal is not an effort to determine fault or blame, but a request to reconsider a situation or decision. The Ombudsman believes that applying basic principles of fairness at the primary level of school-based decision making reduces the use of more complex appeals procedures at a higher level.

The following revised version of the guide incorporates many of the suggestions the Ombudsman received.

A GUIDE FOR SCHOOL BOARD APPEAL PROCEDURES

Any effective complaint process is one based on principles of administrative fairness. These principles include:

1. The right to be treated with respect and dignity.
2. The right to speak on your own behalf or to have an advocate speak for or with you.
3. The right to be heard.
4. The right to participate in decisions that affect you.
5. The right to receive clear, complete and appropriate reasons for a decision.
6. The right to obtain all information that led to the initial decision or is being considered in an appeal.
7. The right to an impartial review of a decision that affects you, a review that is accessible, flexible, timely and easy to use.
8. The right to an appeal procedure that has a built-in mechanism to protect against retribution.

THE RIGHT TO BE HEARD is the first principle of administrative fairness for everyone, including young people. Children and youth need to be told of their right to be heard and the way to exercise this right. Teachers, principals and other employees of the school board have a responsibility to actively encourage children, youth and their advocates to express their questions, complaints or concerns to the proper authority, especially if the complainant believes a decision (or lack of decision) is unfair or unreasonable. Schools are expected to provide students and parents with information about appeal procedures, including the statutory right to an appeal under the *School Act*.

Decision makers must provide **APPROPRIATE REASONS** for a decision affecting a student. The reasons must deal with the student's concerns and be easily understood by the child or advocate. They should be in writing or recorded in a format accessible and understandable to the student and his or her advocate.

The right of a complainant to receive **ALL RELEVANT INFORMATION** is critical. In many cases, providing students, parents and advocates with the information they require will resolve a complaint. The right to receive information, and full disclosure, must be in accordance with the *Freedom of Information and Protection of Privacy Act*.

The person appealing a decision has a right to have the case reviewed by an **IMPARTIAL INTERNAL AND/OR EXTERNAL AUTHORITY**. This authority must be able, if necessary, to reach a different conclusion. School boards cannot simply endorse the decisions of their administrators.

A fair appeal procedure will have **REASONABLE TIME LIMITS**. These limits will be sensitive to the needs of the particular student and the teacher or principal involved, and the availability of an advocate. The procedure should also clarify what a "reasonable" time period is for any appeal, including an appeal under Section 11 of the *School Act*.

Many people who want to appeal a decision fear **RETALIATION** for themselves or their children. Appeal procedures must explicitly state that there will be no reprisals. They must specify that where there is evidence of retribution against persons who have exercised their right to appeal, the school board will take steps immediately to remedy the situation. The policy prohibiting retribution must be readily available to students and advocates, perhaps posted in a visible, public place in the school.

In response to the fears expressed by many parents, and to provide protection against retribution for complaining to her Office, the Ombudsman requested a revision to the *Ombudsman Act*. The new statutory provision passed by the Legislature reads:

15.1 No person shall discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Many **COMPLAINTS CAN BE RESOLVED AT THE CLASSROOM OR SCHOOL LEVEL**, in informal sessions with teachers, principals, students and/or parents, depending on the situation. Complaints can be settled in a variety of ways including mediation and internal review, before a person chooses to pursue more formal appeal procedures. The Ombudsman encourages schools and school boards to consider what options best fit their situations. Peers, counsellors, teachers, principals and administrative officers can act as mediators, or “on-site ombudspersons,” in resolving classroom level or school disputes.

A student’s interests may be jeopardized **WHILE AWAITING THE HEARING OF AN APPEAL**. Fairness requires that the interests of a student be preserved while awaiting the results of an appeal. However, officials must try to find a balance between delaying discipline while waiting for the outcome of an appeal, and dealing swiftly with an offence. Students must know that their actions have consequences. Justice delayed is justice denied. In cases of suspension, some school boards have developed a policy, with due consideration to both health and safety concerns and the rights of the student, to determine when immediate suspension is appropriate.

The appeal process should be **REVIEWED REGULARLY**. Students, parents, advocates, teachers, administrators, as well as other interested parties can participate in the review and in the development of new procedures to ensure that the policy is flexible, user friendly and continues to be appropriate.

The appeals policy and any information provided to students or advocates must include information on how a person can **ACCESS THE OFFICE OF THE OMBUDSMAN**, and when it is appropriate to do so. A brief outline of how to access the Ombudsman, suitable for posting in classrooms, is included with the Ombudsman’s Annual Report for 1995.

E. LABOUR RELATIONS - THE BARGAINING PROCESS

Effective and lasting solutions to current tensions within this province's education system have not yet been found. Ministry officials, school trustees and administrators are looking for ways to change the atmosphere of mistrust found among adult authorities in education, especially when disputes are being resolved. The educational needs of children demand prompt and effective action when labour relations disputes interrupt normal school functions, and relationships among adults in the system break down. Students, parents and communities would benefit from a better understanding of the collective bargaining process.

The Ombudsman has received complaints from individuals concerned about the negative impact on students of job action by teachers and other district staff. Above all, parents and students want their concerns and priorities heard and considered alongside those of the other parties. Communication becomes more difficult during negotiations, not only between teachers and administration, but between teachers and parents, and among teachers. Often regular staff meetings and parent-teacher meetings are discontinued. Inevitably tensions arise when two parties negotiate in private items that impact others. Creative and innovative solutions need to be found to address this complex issue.

Although it is clearly not the appropriate role of the Ombudsman to involve herself in the details of the collective bargaining process, she shares the concerns of all citizens when children's education may be negatively affected by job actions on the part of adults. The Ombudsman expects that school boards and teachers will negotiate contracts that take into account the interests of all of the children and youth they serve.

F. PARTICIPATORY MANAGEMENT

We must understand how a school district is governed before we can review how decision making affects students. Many school districts across British Columbia have adopted a "strategic planning" model of decision making. This model emphasizes inclusion, a principle supported and promoted by the Ombudsman. Students, parents, teachers, teacher aides and all others whose

work impacts students must have the opportunity to be heard in decisions that affect them.

Real power sharing is essential if partnerships in education are to become more effective. Giving proper consideration to each partner in the system requires redefining roles and responsibilities and changing the “top down” structure of the organization. Adopting a style of management in which everyone participates requires that people overcome ingrained habits. Employee groups often perceive management to be committed to maintaining strong central control. Management perceives, at times, that unions are more concerned with protecting the rights of their members than meeting the needs of children. Parents and students perceive that teachers and principals are reluctant to include them in the classroom and in the local school. Students often feel like pawns in the power games being played out by adults.

Effective management seeks to:

- empower individuals to make decisions
- foster an atmosphere of trust and risk taking
- accord fair due process to all
- reflect a shared vision in decision making
- communicate openly and honestly
- achieve consensus in decision making
- provide adequate information for decision making

Any type of fair and inclusive management, regardless of the name we give it, challenges administrators and staff to consider the paramount interests of students above and beyond professional self-interest. Board members, administrators and union representatives can delegate to working groups a role in reaching decisions that affect the workplace and the learning environment for students.

School staff require a clear mandate from school boards to carry out their functions. In turn, they need to develop ways of consulting with students, parents and communities, and working in co-operation with them. The onus is on the school board and staff to shift the perception of many citizens that school

district organization is hierarchical and closed, with all decisions coming down from the top level.

Whatever changes are made in the structure and administration of the school system, and however responsibilities are redistributed, all steps in the process must be fair and equitable to all concerned.

V. SUMMARY OF OMBUDSMAN'S SUGGESTIONS

The Ombudsman has had jurisdiction for schools for just over two years. This report is intended to summarize our experiences to date and to make suggestions for improvement in a non-confrontational and constructive way. The following suggestions are made in that spirit.

1. That the government consider an amendment to the *School Act* to provide for and require the creation and operation of local, district and provincial student councils so that students can participate more effectively in the education system and have a voice in decisions that affect them.
2. That school districts consult with local community agencies and municipal officials on how to make school facilities more available for the use of the whole community for a greater portion of the year.
3. That school districts improve parental participation in schools at the local, district and provincial levels by:
 - developing volunteer programs to recruit, train, support and supervise volunteers in local schools
 - providing facilities and staff support for volunteer programs
 - supporting the formalization of local and district parent advisory councils
 - developing policies and procedures that encourage communication between local, district and provincial Parent Advisory Councils, and local school districts
4. That school districts, in consultation with government, relevant consumer groups, service providers and professional schools and organizations, review current methods of integrating multi-disciplinary service delivery for children, youth and their families, with the objectives of:

- ensuring easy access to needed services for children and youth with unique or exceptional needs
 - reducing the need for multiple assessments when more than one service may be required by a child or youth with unique or exceptional needs
 - establishing multi-disciplinary, cross-ministry methods of case management that invite the service recipient to consent to and participate in service planning and decision making
 - encouraging multi-disciplinary methods of professional education, research and staff development, paying particular attention to the training needs of front-line service providers who work with students who have unique or exceptional needs
 - using the services of child psychiatrists and psychologists in a more flexible and economical way as diagnosticians, consultants, researchers and trainers.
5. That the Ministry of Education and school districts include students with unique or exceptional needs, including students who have “dropped out” of school, on the Student Support Services Committee and the Special Education Advisory Committee, to ensure that the needs and interests of all students are effectively represented.
 6. That school districts develop policy to ensure that all students and/or their parent(s) have the freedom to bring an advocate to interviews or meetings with school or district personnel.
 7. That the Ministry of Education consider providing direction and guidance to school districts by establishing by regulation under the *School Act* a provincial appeal procedure for all districts that satisfies the requirements of natural justice and administrative fairness. Such a procedure should encourage the use of alternative dispute resolution mechanisms such as mediation. Although the *School Act* gives the responsibility to school boards for establishing appeal procedures, if these procedures differ from district to district, there may be regional disparities and some may be more fair than others. Students and parents must have access to a fair and equitable appeal process regardless of where they reside, and must be assured that there will be no reprisal for initiating an appeal.

8. That school boards, employees and the Ministry of Education ensure that no collective agreements negatively affect students or violate the principles stated in this report.
9. That the government establish by legislation a Provincial Statement of Principles, specifying the rights of all children, as a guide for all public services to children. The principles must be consistent with the provisions of the *Canadian Charter of Rights and Freedoms*, the *United Nations Convention on the Rights of the Child*, the new *Child, Family and Community Service Act* and this report.
10. That school districts ensure that their policies and procedures for maintaining student discipline treat children and youth with behaviour problems as persons with unique or exceptional needs, and that they develop constructive alternatives, based on an integrated model of service delivery, to using out-of-school suspensions for inappropriate or challenging behaviour.
11. That schools explore ways of scheduling teacher-parent consultations to accommodate working parents.
12. That school boards and the Ministry of Education explore training opportunities for teachers and other staff on how to best support children and youth with unique or exceptional needs.

**OMBUDSMAN PUBLICATION LIST OF REPORTS
RELATED TO CHILDREN AND YOUTH**

I. Annual Reports - 1979 - 1993

II. Special Reports to the Legislative Assembly

No. 13 The Willingdon Case, 1985 (Corrections Branch)

III. Public Reports to the Legislative Assembly

No. 17 The Willingdon Youth Detention Centre, 1989

No. 22 Public Services to Children, Youth and Their Families in British Columbia, 1990

No. 24 Public Response to Request for Suggestions for Legislative Change to *Family and Child Service Act*, 1991 (Ministry of Social Services and Housing)

No. 32 Abuse of Deaf Students at Jericho Hill School, 1993 (Ministry of Education)

No. 34 Building Respect: a Review of Youth Custody Centres in British Columbia

IV. Ombudsman Discussion Papers

Advocacy for Children and Youth in British Columbia, 1993

Children Should be Seen AND Heard, 1994

STATEMENT OF EDUCATION POLICY ORDER

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*Note: Parts A & B are intended to apply to all schools, public and independent.

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Part A: Mission Statement

The purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills, and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy.

Part B: General Policies for the School System

The Educated Citizen

A quality education system assists in the development of human potential and improves the well being of each individual person in British Columbia society.

Continued progress toward our social and economic goals as a province depends upon well-educated people who have the ability to think clearly and critically, and to adapt to change. Progress toward these goals also depends on educated citizens who accept the tolerant and multi-faceted nature of Canadian society and who are motivated to participate actively in our democratic institutions.

Government is responsible for ensuring that all of our youth have the opportunity to obtain high quality schooling that will assist in the development of an educated society. To this end, schools in the province assist in the development of citizens who are:

- thoughtful, able to learn and to think critically, and who can communicate information from a broad knowledge base;
- creative, flexible, self-motivated and who have a positive self image;
- capable of making independent decisions;

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- skilled and who can contribute to society generally, including the world of work;
- productive, who gain satisfaction through achievement and who strive for physical well being;
- cooperative, principled and respectful of others regardless of differences;
- aware of the rights and prepared to exercise the responsibilities of an individual within the family, the community, Canada, and the world.

Diversity and Choice

Government is committed to ensuring that parents in every region of the province have access to quality public schooling for their children. For those students unable to attend school because of remoteness or illness, the province will provide appropriate delivery systems to ensure access to the provincial curriculum.

In an effort to accommodate varying parental and student expectations of school services, public schools, within available resources, will provide parents and students with choice of programs.

Government is also committed to the principle that parents have an historic right of choice regarding the schooling of their children. Parents in British Columbia have the right to enroll their children in a public school or in any independent school of their choice.

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Part C: Policy Statement on Public Schools

Goals of Education

Prime Goal of Public Schools – Supported by the Family and Community

- *Intellectual Development* – to develop the ability of students to analyze critically, reason and think independently, and acquire basic learning skills and bodies of knowledge; to develop in students a lifelong appreciation of learning, a curiosity about the world around them and a capacity for creative thought and expression.

Goals that are shared among Schools, the Family and Community

Schools are expected to play a major role, through learning experiences and supervised practice, in helping students to achieve the following goals:

- *Human and Social Development* – to develop in students a sense of self-worth and personal initiative; to develop an appreciation of the fine arts and an understanding of cultural heritage; to develop an understanding of the importance of physical health and well being; to develop a sense of social responsibility, and a tolerance and respect for the ideas and beliefs of others.
- *Career Development* – to prepare students to attain their career and occupational objectives; to assist in the development of effective work habits and the flexibility to deal with change in the workplace.

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Attributes of the Public School System

- *Accessibility* – a variety of programs is available in the province to meet the full range of student needs.
- *Relevance* – programs are current, and relevant to the needs of the learner.
- *Equity* – resources are allocated fairly.
- *Quality* – professional teaching and administration are of high quality.
- *Accountability* – resources are allocated in a cost-effective manner; parents and the community are informed of the progress of schools and are involved as partners in planning.

Duties, Rights and Responsibilities

Students: have the opportunity to avail themselves of a quality education consistent with their abilities, the opportunity to share in the shaping of their educational programs, and the opportunity to determine their career and occupational goals. They have a responsibility to make the most of their opportunities, to respect the rights of others, and to cooperate with fellow students in the achievement of their goals.

Parents: have the right and responsibility to participate in the process of determining the educational goals, policies and services provided for their children. They have a primary responsibility to ensure that children are provided with the healthy and supportive environment necessary for learning. They have a responsibility to help

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shape and support the goals of the school system and to share in the tasks of educating their young.

Teachers: have the right to exercise professional judgment in providing instruction to students in accordance with specified duties and powers. They have a corresponding responsibility to ensure that each student is provided with quality instruction, to participate in all normal school activities and to monitor the behavior and progress of each learner in accordance with provincial and local policies. They have a responsibility to communicate with students and parents, and are accountable to the School Board and its delegates.

School Principals: have the right to exercise professional judgment in managing the school in accordance with specified duties and powers. They have a corresponding responsibility to ensure that each student is provided with opportunities for a quality education. Principals are to provide administrative leadership, in consultation with teachers and the community that reflects the aspirations of parents and the school community and that is consistent with provincial and district guidelines. They cooperate with parents and the community in the delivery of non-educational support services to students, and focus on the following areas of school concern: (1) student access and achievement; (2) quality teaching; (3) communication with parents and the community; and (4) accountability to parents and to the Board.

School Boards: have a duty to govern districts and their schools in accordance with specified powers in a fiscally responsible and cost effective manner. They have a responsibility to ensure that schools provide students

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with opportunities for a quality education; to set education policies that reflect the aspirations of the community and that are consistent with overall provincial guidelines; to provide leadership and encouragement to schools and the community; to cooperate with the community and social service agencies in the delivery of non-educational support services to students; and to focus on the following areas of district concern: (1) implementation of provincial and local education programs; (2) school finance and facilities; (3) student access and achievement; (4) teaching performance; and (5) accountability to parents, taxpayers, the community and to the Province.

District Officials: have a duty to exercise professional judgment in managing the district in accordance with specified powers and duties. They have a corresponding responsibility to provide professional leadership in the design and implementation of education programs in districts, and are accountable to the local school board.

The College of Teachers: has the duty to establish and apply standards of fitness and qualifications governing admission to the teaching profession. The specific duties of the Council of the College are to approve, for certification purposes, teacher education programs established by provincial Faculties of Education, to define bylaws and policies related to the academic and professional qualifications of teachers, to issue teaching credentials, to investigate allegations of professional misconduct and, if necessary, to exercise professional judgment in disciplining its members. The College has the responsibility for encouraging and facilitating programs of continuing teacher education, professional development and inservice designed to ensure general

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teacher competence, and to improve the quality of teaching in provincial schools.

The Community: has the right to expect that every child will have access to quality education provided in a fiscally responsible and cost effective manner. The community, through local volunteer groups and private and public agencies, has a corresponding responsibility to support the family and school by providing children with a healthy and supportive environment in the community.

The Ministry of Education: has a duty to set policies for the British Columbia public school system in accordance with specified duties and powers. The Ministry has a corresponding responsibility to ensure that the education system provides students with opportunities for a quality education in a cost-effective manner; to set standards and overall directions for the education system; to provide leadership and encouragement to all educational agencies in the province; to cooperate with provincial agencies in the delivery of non-educational support services to students; and to focus at a high level of provincial concern on the following areas: (1) finance and facilities; (2) program direction, development and implementation; (3) student access and achievement; (4) teaching performance; and (5) system evaluation and public accountability.

Other Government Ministries and Agencies: have a duty to set policies in accordance with specified powers. They have a corresponding responsibility to ensure that provincial policies and resources support the family and local community in providing a healthy and supportive environment necessary for children's learning.

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The Public: The public of British Columbia has the right to expect that schools operate effectively and efficiently and are accountable for evaluating and reporting their progress on a regular basis. The public has the corresponding responsibility to provide schools with the necessary resources and moral support to fulfill their mission.

Part D: Policy Statement on Independent Schools and Home Schooling

General Policy

Government recognizes and supports the principle of independent schooling in order to provide parents with alternatives to public schools. Government provides financial support for those schools that meet specified standards in a number of areas including curriculum and teacher certification consistent with the provisions of the *Independent School Act*.

Rights and Responsibilities

Parents: have a right to enroll their children in a registered independent school of their choice. Parents have a corresponding responsibility to ensure that the curriculum and programs being offered by the school are of suitable quality.

Parents may choose to school their children at home provided that certain conditions are satisfied. If they choose home schooling, they have a responsibility to register their children in a public school, an independent school, or a regional correspondence school. Home schooled students and their parents will be offered educational services including assessment, access to learning materials and record keeping. Parents have a

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responsibility to ensure that children are provided with a healthy and supportive environment necessary for learning.

Independent School Authorities: have a duty to determine policies and curriculum in accordance with specified powers. They have a responsibility to register with the Ministry of Education and to provide the Ministry with appropriate information.

The Ministry of Education: has a duty to determine policies for independent education in accordance with specified powers and duties. The Ministry has a responsibility to ensure that these regulations and policies are implemented.

**ADVOCACY
FOR CHILDREN AND YOUTH
IN BRITISH COLUMBIA:**

An Ombudsman Discussion Paper

OCTOBER 29, 1993

***OFFICE OF THE OMBUDSMAN
OF BRITISH COLUMBIA***

***This discussion paper has been prepared for use as part of an
Ombudsman process of consultation with young people.
The proposals presented do not necessarily
represent the final position of the Ombudsman.***

***Any child, youth, youth group or organization that advocates
with and for young people who wish to participate in the
consultation process can do so by contacting any member of the
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A. Ombudsman Principles Concerning Children and Youth Advocacy

The Ombudsman believes that young people want, need and deserve the types of reforms that are proposed in this paper. Investing in young people is investing in the future of British Columbia and Canada. Children are indeed our most valuable resource. Adults can no longer risk increasing youth alienation by shutting out young people from the decision making processes. This is a matter of rights, dignity, respect and affection.

The Ombudsman's proposals on child and youth advocacy are guided by the following principles:

- young people should be treated with dignity and respect and should be supported in developing self-advocacy skills in a manner consistent with their interests and abilities;
- when decisions are being made that affect young people, their views must be sought and carefully considered;
- young people should be the paramount concern of families, communities and governments and deserve first priority in the consideration of the public good and in the allocation of resources;
- families and child-care organizations require status and access to community support, resources and information in order to be effective natural child advocates;
- when significant adult disagreements arise involving a young person receiving or applying to receive a public service, the young person must have access to a fair legal and/or administrative hearing and representation intended to ensure that his/her views and interests are fairly and independently represented;

- young people are entitled to a clear statement of their rights and these rights, including those set out in the United Nations Convention on the Rights of the Child, should form a foundation for child and youth advocacy;
- child and youth advocacy services provided in the public sector must span all public agencies, services and departments that serve young people.

B. Overview of Ombudsman proposals

Government is presently reviewing its laws and policies about children, youth and their families. How to improve advocacy for young people is an important part of that review. This discussion paper will be used as part of the Ombudsman's consultation with young people and their nominated advocates throughout British Columbia. This follows up on recommendations about child advocacy in Ombudsman Public Report No. 22 (November 1990).

The paper likens advocacy to "going to bat" for young people (0 - 19 years) who cannot vote and have a restricted power base. Advocacy is seen as necessary to advance young people's rights, interests and viewpoints - particularly in their dealings with government services (schools, health and social services, youth corrections etc.). The paper talks about both

- *individual, case or personal advocacy, and*
- *class or systems advocacy.*

Young people, parents, neighbours and friends are often the best *natural advocates*. But often, young people and their natural advocates need help from more *formal (professional) advocates*. The most important job of advocates is to make sure that young people's individual and collective views are heard and carefully considered - especially when important decisions that affect them are being made by those in authority. Sometimes the issue or conflict requires a particular kind of advocacy which can be *legal or administrative*.

There are three main ways in which people exercise power and enforce rights. They are self advocacy (personal, natural), political advocacy (legislative) and legal advocacy (courts). Children are caught in the conundrum of being discredited and not listened to, disenfranchised and not able to vote, and considered incompetent and unable to pursue legal remedies. An *ombudsperson for children and youth* is seen as a way to put young people's issues on the agenda by accessing the Legislative Assembly directly. This enables the community and all elected officials to consider matters affecting young people in a non-partisan, comprehensive way.

Having an Ombudsman does not negate or excuse the government from taking responsibility for children when it provides services or devotes resources intended to benefit them. No one denies that quality outcomes for children require integration of all services. There appears to be considerable reluctance and confusion about how to do this. A fixed point of responsibility must be developed, given status, and embedded within the public service. What this fixed point of responsibility looks like is a decision that properly rests with government. It may be a separate, stand alone ministry, or a Minister responsible for children, an effective Commissioner or Secretariat, and/or an office of a child advocate.

In this discussion paper, the Ombudsman makes the following proposals to government intended to empower young people and their natural advocates.

Proposals to strengthen natural advocacy

- For government to make sure that no one is fearful about complaining or advocating on behalf of a young person. Young people, parents, teachers, foster parents and other "natural advocates" should not be scared because they go to bat for a young person. Government, provincial and local, and service providers need to reassure people that advocacy for young people is expected and supported.
- For government to work with communities to make sure that "case advocates" are available to young people in their home communities. One option suggested is to look at placing child and youth advocates (not lawyers) in every legal aid office in B.C. so that they are at arms length from Ministries.
- For public services to have fair complaint, review and appeal mechanisms that are easily understood and usable by young people.
- For government to encourage inclusion of young people in mediation and other types of conflict resolution processes - unless there is a very good reason not to do so, such as harm to the child.

- For the provincial and local levels of government to work in partnership to ensure the existence of appropriate advocacy mechanisms for young people in their community.
- For government to set up a fixed mechanism to ensure broad representation of the views and concerns of young people to provincial government policy-makers. It is proposed that local advocacy for young people be supported through, for example, active Student Councils in schools, Child and Youth Advocates in local municipalities and Youth in Care Networks for young people in or from state care. Young people would have direct access to the proposed Ombudsperson for Children & Youth.

Proposals to reform legal advocacy for young people

- For government to reform legal services available to young people so that they are understandable and accessible. It should be easier for young people to be independently represented by their own lawyer in serious matters before the Courts, especially *Family Relations Act and Family and Child Service Act* matters.

Proposals to improve administrative advocacy for young people

- For government to establish a "fixed point of responsibility" for young people in (the executive branch of) government - such as a newly created Ministry and/or a Cabinet Commission exclusively concerned about young people and integration of services. This "fixed point of responsibility" would be given the specific mandate of integration of laws, policies, procedures and regulations for all departments responsible for services to children and youth.

Proposal for a Legislative Ombuds Office for Children and Youth

- For government to establish a separate Ombudsperson in the legislative branch of government exclusively concerned with young people. A list of duties of the proposed Child and Youth Ombuds Office are suggested in the discussion paper. This independent Office of the Legislature would represent the views and interests of young people to the Legislative Assembly and make recommendations to ministries and executive government intended to strengthen administrative advocacy.

Proposal for a Children's Charter

- For government to introduce a "Children's Charter" - a law to outline the rights and entitlements of young people in B.C. This law would guide natural advocates, service providers and policy makers in their work with children and youth and should be drafted to be consistent with the *United Nations Convention on the Rights of the Child*, as far as is appropriate.

Proposal concerning advocacy for First Nations children

- For the proposed Child and Youth Ombudsperson to enter into discussions with First Nations to discuss the particular circumstances and advocacy needs of Aboriginal young people at this time when self-government is being negotiated and report on those discussions.

C. Introduction and Background

1. What's the purpose of this paper?

In November 1990, the Office of the Ombudsman called on government to strengthen child and youth advocacy in B.C. In response, the Ministries of Attorney General, Health and Social Services provided three seconded staff to the Ombudsman who agreed to assume a limited advocacy role while the newly formed Child and Youth Secretariat was to address longstanding problems of fragmentation among various child-serving Ministries. The Ombudsman committed to follow-up on these initiatives and this discussion paper is one part of that process.

It has been estimated that up to one third of the complaints and inquiries received by the Ombudsman (16,496 in 1992) are from or about young people (under the age of nineteen years). Most of these contacts are about problems being experienced by young people within the education, health, social service and youth justice systems. About one-third of these calls or visits are from young people (as young as 9 years old). The rest are from concerned parents, caregivers, friends, neighbours and professionals who are advocating - or "going to bat" - for a particular child or youth.

Since the Ombudsman's 1990 Public Report No. 22 was released, the government changed and in 1993 a Community Panel report advised the Ministry of Social Services that advocacy for children, youth and their families needed to be strengthened in communities and across the different ministries. A committee was set up, chaired by the Superintendent of Family and Child Service, to suggest ways for government to improve advocacy. The Ombudsman accepted an invitation to participate on condition that there were representatives from all child-serving ministries on the committee. As a member of this committee, the Ombudsman has heard youth and adult representatives speak repeatedly about the need for young people to be

involved and consulted when planning new approaches to advocacy. The Ombudsman has decided to prepare this discussion paper and proposals for consideration by youth, community and government concerning child and youth advocacy that reflects the Ombudsman's experience in investigating complaints from and about young people. The Ombudsman wants her advocacy perspective to accurately reflect the views of young people. This paper is a first step and will be used to consult with young people and their advocates in different regions of the province. Based on these discussions, the paper will then be re-written and given to Deputy Ministers in government for their comments. An Ombudsman public report on child and youth advocacy may be released following those discussions.

2. What do we mean by child and youth advocacy?

For the purpose of this discussion paper the Ombudsman defines child and youth advocacy as:

activities undertaken by self or others intended to ensure that the rights, interests and viewpoints of children and youth are carefully considered and fairly represented in all matters that affect them. These advocacy efforts are particularly in relation to public policies and services and are directed at both individual and systemic issues.

Young people deserve to be treated with dignity and respect by adults in authority. Children are persons in their own right and should no longer be considered as the property of their families. This requires that children and youth be seen ***and heard***. This does not mean that a five year old child should be unfairly burdened with adult decision making responsibilities. It does mean that the child deserves the respect of having her or his views carefully considered when decisions are made that affect her or him. For an infant or child with whom we have difficulty communicating, independent representation may be necessary as part of a fair decision-making process, especially when adults in authority are in serious disagreement about the child's rights

or interests. Every effort must be made to understand the child's perspective. They cannot be bypassed in the process.

In May 1992, young people in or from state care met at the University of Victoria to tell a government appointed Community Panel how the child, youth and family service system should be improved. They said that a child advocate or ombudsperson was needed, not to look out for their best interests, but to safeguard their legal rights. They said that this should be "*an independent, outside person*" because "*youth often don't trust the system*". Youth said that the job of the advocate or ombudsperson should include informing young people of their rights, checking up on standards of services provided and investigating complaints from or about young people. Young people, they said, should participate in selecting the advocate or ombudsperson.

This paper talks about *informal or natural advocacy* (for example by child, youth, parents, neighbours) and *formal or professional advocacy* (for example by lawyers, child and youth care professionals, service providers, Ombudsman). Formal advocates ought to lend support to natural advocates and all advocates should help children and youth learn how to be their own best advocates.

Individual advocacy should be available in the young person's home community. Class or systems advocacy is required at the provincial, territorial and/or federal level where government, through Ministries and the Legislative Assembly or Parliament, make policies and laws that greatly affect young people. Advocates may work for an individual child or youth (*individual, personal or case advocacy*) or for a group of children or youth like children in poverty, students with disabilities or youth in or from state care (*class or systems advocacy*).

3. *Why is child and youth advocacy needed?*

Children and youth are vulnerable, powerless, and have interests and views that sometimes conflict seriously with the views of adults in authority. The vulnerability of young people - within families, within

communities and as recipients of public services - has been well documented. Children and youth comprise a permanent, and vulnerable, minority group within our society. In law, children constitute a dependent and legally "incompetent" group. There are limited legal remedies for children because of their dependency and lack of legal status. Children do not have the personal power, skills or resources of other minority or interest groups. Permanent structures are required to ensure that child and youth issues receive the public attention they deserve.

In its stark form, the vulnerability of individual children is seen daily in provincial courts where adults are in dispute about child maintenance, custody and access under the *Family Relations Act* and/or in child protection matters under the *Family and Child Service Act*. Less visible, but equally important to young people, are the conflicts that can and do arise from administrative decisions in education, health, social service and justice programs. The sum of all of these areas touches almost every aspect of a child's life.

The vulnerability of groups of children and youth shows itself in issues such as child poverty, access to education for children with disabilities and the treatment of children and youth in state care facilities. Advocacy is needed to ensure that children and youth are treated with dignity and respect. The importance of listening to young people is exemplified by the report resulting from recent consultations undertaken with young people by the Canadian mental Health Association which stated that:

...youth have different values and priorities from the ones society has traditionally implemented in the development of social services and supports for the young. The young people emphasized the importance of emotional and mental well-being over physical comfort and rigid adherence to standards...youth made it very clear that for them, respect is a prerequisite to any service or youth policy.

D. Ombudsman Proposals

1. *What types of advocacy do young people need?*

A matrix of advocacy services must be available to children, youth and their natural advocates. An ideal community nurtures the families and children within it. A new born baby, a First nations child, a youth who is deaf, a refugee child, a foster child, a young person in conflict with the law, a student with a disability and a young person in a mental health institution - each of these may at times require the support of an advocate. The type of advocacy required will vary and must be adaptable to individual circumstances. In most circumstances, the advocacy of parents, youth or other natural advocates is enough to resolve concerns. But in a large number of cases children, youth and their natural advocates will require assistance from more formal advocacy services.

An essential part of the matrix is systemic advocacy which is necessary to ensure that young people's opinions and perspectives are inextricably linked. There must be a means to resolve a problem for an individual child and also have the means to address the same unfairness because of a problem within the system. Advocacy for young people should be available in all aspects of the matrix including:

- families and communities where the *natural advocacy* of parents, relatives, neighbours and young people themselves must be nurtured and supported;
- courts and tribunals where *legal advocacy* should be accessible to children and youth to ensure that their views are heard;
- the administration of provincial and local government services such as recreation, education, health, social and justice services where *administrative advocacy* must be available; and

- M.L.A.'s offices and the Legislature where matters of vital importance to young people are decided and where *legislative advocacy* should ensure that the views and aspirations of young people are fairly considered in the development of our laws and the allocation of public resources. There must be access to and interest by elected members despite children not having the right exercise their franchise. If this is not done, the other parts of the matrix must receive greater attention and be strengthened.

2. Strengthening natural and self-advocacy for young people

The best advocates are young people themselves with assistance provided by parents, friends, neighbours, teachers and other front-line professionals who are in frequent contact with children and youth. Self-advocacy is a vital life-skill that should be taught at an early age and encouraged throughout life. For younger children, the natural advocacy of parents is crucial and the parenting role needs to be given the status it deserves in our society. In the majority of cases, families resolve their differences informally because the parent/child relationship is strong and based on mutual respect. In some cases, however, the parents interests and views can seriously and repeatedly conflict with the views of their children.

Important examples of natural advocacy in action include class efforts by women, First Nations, and persons with disabilities. While each of these advocacy movements includes issues of importance to children and youth, they are not exclusively concerned about children and youth. Of marginalized groups, children and youth are the least well organized because of their lack of status and resources. Groups such as the Federation of Youth in Care Networks, however, are beginning to establish themselves and many municipalities are recognizing the importance of consulting with young people. Vancouver's Child and Youth Advocate is a model that has been admired by other provinces and municipalities and is worthy of replication in other urban centres in B.C.

The provincial government's decision to withdraw funding for the former B.C. Youth Council was regrettable even though the council was limited in terms of representation and in reporting to only one ministry (Advanced Education and Job Training). If government wants to prepare young people for future leadership roles then it should provide meaningful opportunities for youth participation.

Failing to promote the involvement of young people in the decision-making processes in our province and communities will perpetuate the alienation of youth.

Ombudsman proposal #1 to strengthen natural advocacy

Government, through all child and youth-serving ministries, establish a broad representative voice for young people in the formulation and implementation of all relevant government policy and program developments.

Government, through all child and youth-serving Ministries, provide continued and enhanced supports to the Federation of B.C. Youth in Care Networks.

Government, in partnership with municipalities and regional districts, promote youth involvement at the community level and establish appropriate child and youth advocacy mechanisms within local governments.

Government, through the Ministry of Education and School Boards, strengthen student council activities within all schools and school districts and require their existence through an amendment to the *School Act*.

3. Enabling natural advocacy

A major barrier to effective natural advocacy is the fear often felt by young people, parents, foster parents and front-line workers about what will happen to them if they complain - the fear of reprisal. The Ombudsman hears about these fears every day, for example:

- the youth in care who was scared that her social worker and foster mother would be angry at her for complaining about her foster home;
- the single parent who needs additional child care supports but fears that this will be interpreted by her worker as a child protection concern;
- the Ministry worker who is reprimanded or told off by his supervisor for referring a young person to the Ombudsman;
- the contract agency administrator who says that the Ministry is referring inappropriate children to his program but who is fearful of formalizing a complaint because he may lose the contract;
- the young resident of a correctional facility who fears that complaining about conditions in the institution will result in harsher treatment;
- the foster parent who disagrees with the social worker's plan for a child but who fears that her home will not be used if she complains;
- the parent who fears that her child will suffer if she complains about her child's treatment in the classroom.

Recent changes to the *Ombudsman Act* are intended to protect advocates and others who complain. This statutory protection is important for vulnerable young people and those acting on their behalf. Section 15.2 of the *Ombudsman Act* states:

No person shall discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Ombudsman proposal #2 to strengthen natural advocacy

Government should act to promote natural child and youth advocacy in families and communities and, in consultation with young people, parents, staff, contractors and child advocacy groups, should act to identify and eliminate barriers to effective "natural" advocacy. As a first step, all child and youth-serving Ministries should adopt a common policy, effectively communicated to children, youth, parents and communities that supports front-line child and youth advocacy. Formal assurances must be provided by child and youth serving Ministries that advocacy efforts will *not* result in negative consequences but will receive corporate support.

4. Effective review processes

Lack of awareness, like fear of reprisal, acts as a barrier to effective natural advocacy. Too often, the Ombudsman hears from young people and their parents that they are not aware of how to complain to a government authority. In many public service programs, complaint procedures are required in law and routinely communicated to "customers". This is often not the case in the social service sector. In 1990, the Ombudsman said that:

A common objective of service providers is to assist young people to express themselves in age-appropriate ways and to help them develop trust relationships, particularly with persons in authority. Fair administrative review procedures

can assist in the achievement of this goal by empowering young people to challenge, in appropriate ways, decisions of authority figures; by assuring the young person a fair hearing; and through the non-defensive reaction of the person in authority to the challenge. An effective complaint and review mechanism can also act to defuse the angry response of a child or youth when a decision is made with which she or he disagrees.

- Ombudsman Public Report No. 22, (1990, p.111)

The absence of child and youth friendly administrative review and appeal procedures, especially in the child welfare system, has long been a concern to the Ombudsman. The current White Paper on child and family services fails to remedy the situation and does not address the problem of complaints that cross Ministry boundaries. On a positive note, the Ombudsman recently met with an Assistant Deputy Minister (ADM) with the Ministry of Social Services and was informed that a directive was to be sent to all staff supporting front-line advocacy and reinforcing the need to tell young people, parents and other clients about their right to complain and seek review if dissatisfied. This initiative should also take place in other child and youth serving Ministries.

Ombudsman proposal #3 to establish fair review and appeal mechanisms for young people

Government should act immediately to ensure the existence of fair and appropriate statutory-based administrative review and appeal mechanisms in all child/youth-serving sectors. In particular, the ministry of Social Services should ensure that the proposed *Child, Family and Community Services Act* includes appropriate provisions for child-sensitive administrative review and appeal. This proposal is in line with Recommendation #16 of Ombudsman Public Report No. 22.

5. Reforming legal advocacy for young people

Historically, children were presumed to be incomplete beings, not fully competent to determine and safeguard their interests. The law did not recognize any legal capacity in children. They were prohibited from suing others or of being sued. An infant had to be represented in court by a male adult "next friend". The father alone had the right as "guardian by nature" of his children, to represent them. At his death, his authority vested in a testamentary guardian he or the Chancery court would have appointed. It was not until the 19th century that a mother could be appointed guardian of her children. However because of other laws at the time such an appointment could be unwise. Women, in the 19th century, did not have legal capacity and therefore could not represent or protect their children very effectively.

In British Columbia today the situation has not significantly changed. The Rules of the Supreme Court of B.C. require that a child be represented by an adult of sound mind in any court action. The law still considers children to be under a legal disability and so they cannot assert their legal rights or defend themselves without the appointment of a guardian ad litem. A guardian ad litem can be a parent, relative or any adult who has no interest adverse to that of the child he or she would be representing. The law has traditionally been concerned and still is concerned that the propriety of the legal proceedings is maintained and that there is someone available to pay costs to the defendant if necessary. The guardian ad litem appears to fulfil the role of a legal and financial guarantor.

The purposes of the guardian are paternal in nature vis-a-vis the child. The wishes of the child are not legally binding on the guardian. The guardian ad litem is supposed to advance or protect the interests of the child as he/she and the legal advisors see those interests. When the guardian is a parent or relative, the interests of the child which may not be identical to that of the parent or family may not be protected or even acknowledged. On the other hand where the guardian is a stranger to the child and there are competing adult interests in a lawsuit it is possible that the guardian is less assertive out of a biased regard for the adult interests and an insufficient regard for the child's interests. A further impediment to

maximizing the participation of children and youth in the assertion and protection of their legal rights is the fact that the guardian ad litem must be prepared to pay the costs of the litigation if they are the plaintiffs and they lose the action and the court awards costs against them. The child does not pay; the guardian must. This could be a disincentive to a potential guardian in cases where he/she also would not realize any personal benefit from a successful lawsuit on behalf of the child. The enjoyment of a child's full rights therefore can be dependent on finding an altruistic grown-up friend or a competent public institution.

Legal advocacy usually involves lawyers pleading the case of a client before a court or tribunal. By the time matters involving children and youth reach the courts, a harmful adversarial atmosphere often exists. Mediation approaches in the child, youth and family service sector show promise in reducing the level of conflict in some cases. But caution is necessary to ensure that the power imbalance between young people and adults is properly addressed. In matters that directly affect them, young people must be routinely invited to sit at the mediation table. The onus should be on adult parties to mediation to show why a child or young person should be excluded.

Ombudsman proposal #4 to involve young people in mediation

That government promote the involvement of young people in mediation and other problem solving processes that affect them. A young person should always be included unless the adults involved can demonstrate why they should be excluded. The views of the young person should always be sought and where these views differ from those of adult parties to mediation, the young person should be entitled to receive the assistance of an advocate of her or his choosing. The *Family Relations Act* and the revised *Family and Child Service Act* (and the model proposed in the White Paper) should be reviewed to ensure compliance with the principle of involving young people in mediation and related processes.

Currently children and youth may be eligible for counsel through legal aid for *Young Offenders Act* matters, for *Family Relations Act* matters if they are a party (on their own or through a "next friend"), or for representation before an administrative tribunal, for example an income assistance appeal under the *GAIN Act* or a hearing by a School Board pursuant to the *School Act*. However, children's eligibility for legal aid services is dependent on financial eligibility (calculated on the basis of family income?), the seriousness of the case and the discretion of Legal Services.

The *Young Offenders Act* is the only piece of legislation that respects the right of a young person to be independently represented by legal counsel. In other matters, the discretion lies with the administering authority - usually Legal Services, the Public Trustee or the Attorney General. For example, the Attorney general may, upon request, appoint legal counsel (called a "Family Advocate") for a child, in matters under the *Family Relations Act* (*F.R.A.*), a combined *F.R.A.* and *Family and Child Service Act* action, or the *Divorce Act* where the child's interests or views differ from those of the parent(s) or legal guardians. It is interesting to note that as a society we have chosen to guarantee the right to a paid advocate only when there is an allegation that a young person has done something wrong.

Significant gaps exist in current approaches to ensuring that young people are properly represented by legal counsel. Many parents and other natural advocates are unaware of the Family Advocate program and its resources have been seriously limited causing problems of access, availability and adequacy. Also, the mandate of the Family Advocate is to "act as counsel for the interests and welfare of the child." The Family Advocate does not appear to be required in law to represent the child's views. In effect, this can mean that the Family Advocate merely represents yet another adult view about what is in the child's best interests. The Family Advocate's function also overlaps significantly with the functions of Family Court Counsellors who may be appointed by a Court pursuant to the *Family Relations Act*.

Another form of legal advocacy is practiced by the Office of the Public Trustee who acts as the guardian of the estate of children in the permanent care of the Superintendent of Family and Child Service and of children whose parents have died or are deemed to be incompetent at law. The

Public Trustee may appoint counsel to represent a child who is suing (for example, in a personal injury action) or who is being sued. Payment of counsel's fees and disbursements may be paid out of the child's estate although these expenses are normally recovered in any settlement in favour of the child. The traditional role of the Public Trustee is not, in a broad sense, to advance the rights of young people nor is the Office necessarily concerned with promotion of the rights of children and youth to be heard generally. In fact, the services and duties of the Public Trustee appear to be little understood by permanent wards, caregivers or social workers of the Ministry of Social Services.

Legal services provided to children and youth are fragmented and unevenly accessible. No office is currently mandated or funded to take on important test cases on behalf of young people. As far as we are aware, the Court Challenges Fund approved no cases that dealt specifically with children's issues. Young people, parents and natural advocates often express to the Ombudsman their frustrations with the legal system and its complexities. It is not the purpose of this report to provide a detailed analysis of the legal system. But this paper is concerned with the development of comprehensive and coordinated approaches to advocacy that place paramount importance on the child's right to be heard and appropriate ways to achieve that goal. Legal services form an important piece of the matrix of child advocacy

Even at young ages children have important points of view. But too often these views get lost in well meaning, but paternalistic arguments about what is in the "best interests" of a child. New approaches are required that build on a respect for the inherent dignity and strength of young people. Legal advocacy on behalf of young people must be reformed to reflect the real competence of most young people to give instructions. The best interests test may be appropriate for a court to rely upon in exercising its discretion in disputes between parents. When the state and the child are sorting out their respective interests, however, the child or youth must gain active participation.

Ombudsman proposal #5 to review legal advocacy for young people

Government review all aspects of legal advocacy for children including the Family Advocate program, child and youth services in the Public Trustee's Office and the Legal Services program. The review should discover the way to ensure easier access for children and youth to legal advocacy services that are primarily concerned with the child's right to be heard. This review should explore the feasibility of transferring responsibility for ensuring a young person's access to independent legal advocacy services which have the authority to fund important legal test cases on behalf of children.

6. Administrative advocacy for young people

Administrative advocacy is the term used to describe activities in the executive branch of government - that is, the Ministries, Departments, Boards and Commissions responsible for administering the laws enacted by the Legislature and policies, procedures, programs and regulations formulated and proclaimed pursuant to those laws. For young people, this includes services provided through School and Hospital Boards and the Ministries of Attorney General, Education, Health and Social Services.

As discussed earlier, the role of front-line service providers in these government departments should be defined to include advocacy. When front-line advocacy efforts are not successful or when views seriously differ about what is best for a young person, fair and appropriate conflict resolution processes must be assured including access to an advocate at arms length from the service delivery system. This becomes particularly challenging in a sector where young people's service needs often cross many Ministry and agency boundaries and/or mandates.

Currently, there is no fixed point of responsibility for children and youth within the Executive Branch of government. Child and youth services are scattered across many different departments and agencies. Local and

provincial efforts to integrate approaches through, for example, the Child and Youth Secretariat and Child and Youth Committees, have so far not been very successful. Empowered leadership is required within the Executive Branch of government if advocacy efforts with, and on behalf of, young people are to be effective. The Ombudsman believes in the need for a fixed point of responsibility within government for young people receiving services regardless of from which Ministry. Currently, there is no Minister or Ministry charged with exclusive responsibility to represent the views and concerns of children and youth.

While the Ministry of Education and School Boards are exclusively concerned with the provision of educational services to young people, their mandate and practices are not always child or youth-centred, (for example parent advisory councils are required in the *School Act* while student councils are not). Until recent Cabinet changes, the Minister of Advanced Education and Job Training was also called the Minister Responsible for Youth (and the former B.C. Youth Council). This designation has been abandoned. Admittedly that model appeared to be ineffective in its advocacy efforts for young people under the age of nineteen.

Ombudsman proposal #6 to establish a fixed point of responsibility for young people

Government establish a fixed point of responsibility for children and youth within the Executive Branch of government through:

- a) a newly created Ministry with an explicit mandate to ensure the existence of effective administrative advocacy with, and on behalf of, children and youth; and/or
- b) a newly formed Child and Youth Commission or Secretariat with direct access to Cabinet on matters of concern to, or affecting, young people.

This fixed point of responsibility for children and youth should assume responsibility for integration of child and youth services including (but not

limited to:

- i) ensuring the existence of and adherence to common principles, standards and practices in public services to children, youth and their families.
- ii) promoting and reinforcing front-line advocacy with, and on behalf of, young people and their natural advocates; and
- iii) common mediation, administrative review and complaint resolution mechanisms that are child and youth friendly;

7. Advocacy for young people in the legislative branch of government

The role of elected members of the Legislative Assembly (M.L.A.'s) includes advocacy on behalf of their constituents. It is custom to define constituents as "voters" - those adults who have the right to vote for the person of their choice who may represent them in the Legislature. Some M.L.A.s attempt to establish connections with young constituents but few have the resources to establish local mechanisms intended to provide a voice for children. The Legislature and its members could benefit from the advice and recommendations of a legislative office exclusively concerned with the interests and views of the large and vital segment of our community that is, by law, too young to vote.

The Office of the Ombudsman was established to assist and complement the role of M.L.A.s in individual and systemic matters of administrative fairness. A similar type of Office of the Legislature is required to provide a voice for disenfranchised young people and assist M.L.A.s in their collective efforts on behalf of this politically ignored, invisible segment of our communities. It is no longer adequate or appropriate to place the exclusive burden of responsibility for representing children's issues on their parents. Parents need support in dealing with complex bureaucracies; they are not

organized to address systemic issues of concern to their children; they have their own needs and agendas that are not always the same as those of their children; and for thousands of children and youth, one of three ministries is their custodial parent, guardian or caregiver.

Recent reports concerning child and youth advocacy in B.C., Alberta, Saskatchewan and Manitoba have reinforced the need for systemic advocacy within the legislative branch of their respective provincial governments. Most reports reinforce the need to focus advocacy efforts on the rights of children and youth and particularly their right to be heard. Too often, children's issues only come to the attention of the public and politicians through a crisis defined from an adult perspective. Youth crime and problems in the school system are among current issues that are rarely reported or analyzed from the perspective of children and youth despite the negative impact on them..

Since 1990, the Ombudsman, as an Officer of the Legislature and advocate for fairness, has operated in an "administrative child and youth advocacy" role. This role has both strengths and limitations. The appointment of a Deputy Ombudsman for Children and Youth by the former Ombudsman helped create an affirmative action focus within the Office and filled an advocacy void within government and the community. But the critical issues and concerns facing young people and the complexity and fragmentation of services intended to serve them suggest the need for the full-time attention of an adequately resourced Officer of the Legislature. Children and youth are our most important resource and they deserve better than Deputy status - within the Office of the Ombudsman or elsewhere. Young people deserve to be heard through an Office of the Legislature that is exclusively devoted to their interests, concerns and viewpoints.

The name of the proposed Office is less important than its exclusive and specialized concern with the entitlements of young people and particularly their right to be heard. Young people use the terms advocate and ombudsman to mean the same thing for their purposes. While B.C.'s Community Panel and Saskatchewan's Task Force on Child and Youth Advocacy preferred the term Advocate the submission to the Task Force by Saskatchewan's Youth in Care Network commented that:

...there has been lengthy discussion regarding the use of the word "advocate" as uninviting and confusing to young people. It is suggested that the title of the advocate is critical to how young people perceive the service...Young people should be consulted through the decision making process for final consensus of an appropriate title. The symbol of an "eagle" was discussed by participants at the workshop signifying "all seeing, hovering, watching, powerful, swoops down, majestic, taking people under their wing, guiding".

The Office of the Ombudsman has strong roots in this province and because of its traditional relationship with and support to the Legislative Assembly, this paper will propose use of the term Child and Youth Ombudsperson. This proposal will be checked out with young people during the upcoming consultations, prior to any final recommendation. Critically, the proposed Child and Youth Ombuds Office will require the same level of all party support that has been afforded to the Office of the Ombudsman. The proposed Office should reflect a provincial commitment and a celebration of our collective concern for young people.

The legislature should appoint the Child and Youth Ombudsperson in a similar manner used in the appointment of the Ombudsman except that young people should be consulted as part of the process. Serious consideration should be given to establishing a community advisory committee comprised of young people and their natural advocates to assist this Office. Protocols with the Ombudsman should establish appropriate links and reduce confusion about access to the respective Offices.

Ombudsman proposal #7 to establish an Officer of the Legislature with exclusive responsibility for child and youth advocacy

Government establish by statute a Child and Youth Ombuds Office with a mandate to represent the rights, interests and viewpoints of young people. The following powers and duties should be included in the statutory mandate:

- the promotion of the child's right to be heard and the provision of support to natural advocates in their efforts to safeguard the rights of young people;
- the ability to access and report to Cabinet, the legislature and the public on matters of significant interest or concern to young people and their natural advocates;
- the power to undertake investigations in all child/youth-serving agencies with appropriate access to information and powers to initiate individual or systemic investigations;
- the authority to ensure that individual children and youth have easy access to an appropriate continuum of community based case advocacy services and the duty to ensure that the views of young people are appropriately and independently represented in legislative, administrative and legal matters that affect them.
- the duty to monitor implementation of the proposed Children's Charter and reporting to and advising the special advisory committee on implementation of the *U.N. Convention on the Rights of the Child* pursuant to Article 44 of that Convention;
- the duty to ensure that young people, their parents and communities have the appropriate support and information concerning the rights of children and youth and their entitlements to public services;

- the responsibility to comment on intergovernmental matters affecting British Columbian children and youth (for example First Nations, *Young Offender Act* and *Criminal Code* matters);
- the duty to review and comment on proposed children's legislation referred by executive government in advance of first reading and the responsibility to bring to the attention of government gaps or other inadequacies in services or legislation or inconsistencies with the *U.N. Convention on the Rights of the Child*, the *Canadian Charter of Rights and Freedoms* and the proposed *Children's Charter* that may negatively impact young people;
- the power and resources to conduct research and gather statistical information concerning children's rights and child and youth advocacy in collaboration with communities and government.

8. *Case advocacy for young people*

While there is a crucial relationship between individual case and systemic child and youth advocacy, it would be courting disaster to expect that the proposed provincial Child and Youth Ombudsman Office could properly address every individual complaint. Improved review and appeal mechanisms and strengthened front-line advocacy must be complemented with increased access to individual case advocacy services at the community level. Working with communities to strengthen community case advocacy services for young people must be a priority for the proposed Child and Youth Ombuds Office.

Too often, the provincial Ombudsman's Office is involved with a young person's case because there is no identifiable or independent source of advocacy available locally to a young person. Caution is required in raising expectations beyond what is achievable through the proposed model. All of the pieces go to make up the whole. Significant improvements in child and youth advocacy services could be achieved without extravagant additional public expenditures. For example, monitoring and inspection services currently operated within the Ministries of Health, Social Services and

Attorney General may be more effectively done by one authority within the proposed fixed point of responsibility. Regionally, the reassignment of staff (perhaps from supervisory or middle management ranks) from among the four major child-serving Ministries could provide a major stimulus to improved case advocacy services for young people.

One option worth careful review by government is to ensure arms length community case advocacy services through an expanded mandate to the Legal Services Society which funds legal aid offices in communities throughout B.C. This approach would require the addition of multi-disciplinary staff (not necessarily lawyers) with extensive experience in the administration of child and youth services. Their role would include child and youth case advocacy in matters of administration. When individual cases suggest the need for systemic advocacy, community advocates should be assured easy access to the proposed Child and Youth Ombudsperson.

Ombudsman proposal #8 to establish case advocacy for young people in their communities

Government act in partnership with communities to ensure the availability of local and accessible child and youth case advocacy services. Consideration should be given by government to establishing administrative advocacy services for individual young people in local legal aid offices through a model that is child centered, friendly and informed.

9. The entitlements of young people

Young people have the right to be treated with respect, honour and affection. Children and youth also have a right to know what their rights are. Where a young person is surrounded by systems, she or he is entitled to have these rights honoured. Not because of the *Young Offenders Act* or the *Canadian Charter of Rights and Freedoms*, or the policies of public authorities, or the *United Nations Convention on the Rights of the Child*, or because the Ombudsman says so, but because they are inextricably linked

to their humanness. Like all inalienable rights, they belong to the person, are not conditional on others declaring their entitlement to them, and belong to them despite their behaviour. Recently as in the *U.N. Convention on the Rights of the Child* we have begun to articulate what is inherently theirs.

Recognition of some of the rights and entitlements of young people are currently scattered across the laws, regulations and policies of various government departments. Few, if any, lawyers or child and youth care professionals are fully aware of the array of rights that currently exist in law. Furthermore, the rights and entitlements that do exist are often inconsistent and are not routinely communicated to young people. For example, in the course of a recent investigation in a school district, Ombudsman staff met with hundreds of students. Not one had heard of their recently acquired right to complain to the Ombudsman in matters affecting their health, education and safety. If our injection of rights into the lives of young people is only partial and is not holistic - in other words, young people receive only some of the solution to becoming a whole, respected, and valued citizen - the legal potion may, in the end, prove more dangerous than being given no legal entitlement at all.

Previous Ombudsman reports have recommended to government that all legislation concerning children be consolidated within one Act that includes a statement on the entitlements of young people. The Community Panel reviewing child and family services made a similar recommendation. Efforts to reform the *Family and Child Service Act* are hampered because issues such as advocacy, guardianship and community tribunals should be consistently applied across *all* children's legislation. The costs of reform may require that this plan be implemented over time. In the meantime, the rights and entitlements of young people should be spelled out in a Children's Charter that forms part of the enabling legislation for the proposed Child and Youth Ombuds Office.

Ombudsman proposal #9 for a Children's Charter

Government introduce a ***Children's Charter*** similar to that proposed below. The Charter should be enabling legislation and refer to the proposed Child and Youth Ombuds Office and be part of consolidated children's legislation. The proposed ***Children's Charter*** should guide the administration of public services to children, youth and families and should be paramount if in conflict with any other provincial legislation.

A PROPOSED CHILDREN'S CHARTER

PURPOSES

1. The following are the purposes of this Charter:
 - (a) to regulate the relationship between children, youth, their advocates, and the state; and,
 - (b) to ensure that children and youth are treated with dignity and respect as they access public services of the province of British Columbia.

ENTITLEMENTS

1. All children and youth have entitlements which include, but are not limited to, the following:
 - a) to be treated as persons with dignity and respect;
 - b) to be heard and have their views carefully considered in all matters that affect them;
 - c) to initiate appeals, reviews or grievances, and to have independent representation when important administrative or judicial decisions are being made that affect them;
 - d) to be informed of their entitlements and of the legislation, policies and procedures that affect them; including the *Canadian Charter of Rights and Freedoms*;
 - e) to be informed about and to have access to advocacy services;
 - f) to have access to public services intended to ensure their healthy development;
 - g) to an education appropriate to their individual needs;
 - h) to receive appropriate health services;
 - i) to culturally sensitive services;
 - j) to timely decision making;
 - k) to have government provide their parents or guardians with appropriate resources, if necessary, in order to properly and

- appropriately support their children;
- l) to live in a caring, secure, nurturing environment;
 - m) to be free from abuse and neglect, including corporal punishment; and,
 - n) to receive guidance and support o maintain their cultural and linguistic heritage;
 - o) to maintain or develop relationships with family and friends, and to confidential communication with them, unless a court has ordered otherwise;
 - p) to receive and send mail privately and without censorship;
 - q) to a service plan designed to meet their needs, and the right to participate in the planning and decision making, and in any changes made to the plan;
 - r) to privacy in their dealings with government and government funded or regulated agencies;
 - s) to freedom of expression and association;
 - t) to reasonable privacy and possession of personal property;
 - u) to speak in confidence with a law advocate, lawyer, MLA, or the Ombudsman;
 - v) to be provided with interpretation services where language or disability are barriers;
 - w) to be consulted upon transfer from one facility to another;
 - x) to have access to information about them that is held by government and government funded or regulated agencies involved in their lives;
 - y) to receive the religious instruction of the child or youth's choice; and,
 - z) to participate in recreational and athletic activities appropriate to the child or the youth's interests and abilities.

This charter should be equipped with appropriate enforcement mechanisms, such as appeal to an administrative tribunal.

10. Particular concerns for First Nations children

It is unnecessary to recite the stark statistical realities facing young First Nations people. As government to government negotiations begin the individual interests and aspirations of young people must be safeguarded. During any period of transition, while an otherwise marginalized, disadvantaged group becomes truly included and integrated, many within the group will require the support of others. Safeguards are required to ensure that individual children and youth do not get lost in the move toward nationhood.

The Report of the Aboriginal Committee of the Community Panel, *Liberating Our Children, Liberating Our Nations*, pointed out that even under current child protection legislation the right of the child to be heard is not acknowledged. This may be in violation of Article 12 of the *U.N. Convention on the Rights of the Child* which states that:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of natural law.

In line with the intent of this Article, the Community Panel's Aboriginal Committee recommended that:

A child who is capable of forming his or her own views shall be given the opportunity to be heard at any proceedings affecting his or her care and custody and shall have the right to initiate proceedings to review those decisions, including the right to initiate proceedings to change his or her guardianship; and his or her views shall be given weight in any ensuing deliberations.

In line with this recommendation, and recognizing the major reforms currently, and about to, take place in Aboriginal child welfare services, personal advocacy services will be required that ensure individual First Nations children and youth are heard when important decisions are being made that affect them. As child welfare services are rightfully transferred to the authority of Aboriginal peoples, the lives of many individual children will be affected. Appropriate arm's length, culturally sensitive advocacy will help ensure the fair and sensitive treatment of each affected young person. To be effective, the nature of advocacy available to young people will require consultation between all levels of government, including Aboriginal self-government, and the proposed advocacy mechanisms.

***Ombudsman proposal #10
concerning advocacy for First Nations children***

For the proposed Child and Youth Ombudsperson to enter into discussions with First Nations to discuss the particular circumstances and advocacy needs of Aboriginal young people and report on those discussions.

E. Conclusion

Young people, their parents and other natural advocates need a comprehensive, user friendly, locally accessible continuum of advocacy services, perhaps in the form of one stop advocacy centres. This is a long term goal that will require careful planning across different sectors within government and communities. As a first step, the Ombudsman is proposing that a fixed point of responsibility for children and youth be established within the executive branch of the provincial government. A Child and Youth Ombuds Office is also proposed within the legislative branch of government to provide leadership and systemic advocacy supports to communities and the Legislative Assembly. Additionally, the Ombudsman believes that legal advocacy services to children and youth require review and reform. Formal advocacy services must be planned and integrated to ensure that they strengthen the role of self-advocacy and natural advocacy in support of young people.

The establishment of formal mechanisms to provide young people with a direct voice to adult decision-makers is essential. The Ombudsman has already spoken to educators about the need for strengthened student councils in schools. At the provincial level, government's decision to cease funding for the B.C. Youth Council is regrettable. The model had its faults, including its reporting relationship to one Ministry, but the need still exists for formal input to government from a disenfranchised population of young people. It is possible and timely to build this as part of a strengthened provincial approach to child and youth advocacy.

CHILDREN SHOULD BE SEEN *AND* HEARD

Discussion Paper for "Stronger Children - Stronger Families Conference"

June 18 - 23, 1994 - Victoria, British Columbia

*"I have found the best way to give advice to your children is
to find out what they want and then advise them to do it."*

- Harry S. Truman

MESSAGE FROM THE OMBUDSMAN

I urge you to read this paper and to give me your feedback. My Office is responsible for ensuring that children are treated fairly by government. This is a new area and therefore it is important that youth have a say in how government serves you. There is a blank page at the end of this Discussion Paper for you to fill out and deposit in a coalition feedback box at the Conference or mail it to our Office:

931 Fort Street
Victoria, British Columbia
V8V 3K3

Please speak up! We are listening.

LISTENING TO YOUNG PEOPLE: OMBUDSMAN CONSULTATIONS ON ADVOCACY

"To change the system you need information, respect and relationships."

INTRODUCTION

In 1990, in response to Public Report No. 22, government asked the Ombudsman to assume a limited advocacy role for children and provided three seconded staff from the Ministries of the Attorney General, Health, and Social Services to assist. In 1993, as a follow-up to the recommendations concerning child advocacy in Public Report No. 22, the Ombudsman prepared a Discussion Paper, *Advocacy for Children and Youth in British Columbia*, as part of her provincial consultation with young people and their advocates. Information from this consultation has been shared with the government's Task Force on Advocacy chaired by the Superintendent of Family and Child Service, and with an ad hoc group of Deputy Ministers assigned to respond to the Ombudsman's follow up to Public Report No. 22.

The Ombudsman's Advocacy Discussion Paper included proposals to:

- strengthen case and systemic advocacy services for children at community and provincial levels;
- establish or improve review and appeal processes that are child-friendly, so that complaints can be made without fear of reprisal;
- establish a fixed point of responsibility for children within the Executive Branch of government;
- establish an Officer of the Legislature with exclusive responsibility for child advocacy and a mandate to represent the rights, interests and viewpoints of young people to the public, executive government and the Legislative Assembly;
- establish a *Children's Charter* regulating the relationship between young people, their advocates and government;
- enter into discussions with First Nations to address the particular circumstances and advocacy needs of Aboriginal young people during a time of transition towards self-government.

In her Discussion Paper, the Ombudsman defines child advocacy as:

activities undertaken by self or others intended to ensure that the rights, interests and viewpoints of children and youth are carefully considered and fairly represented in all matters that affect them. These advocacy efforts are particularly in relation to public policies and services and are directed at both individual and systemic issues.

In keeping with the belief that *children should be seen and heard*, the Ombudsman and staff from her Child and Youth Team have, during the past few months, met with hundreds of young people and their advocates in different communities of British Columbia. The advice provided to the Ombudsman by young people and their experiences with education, child welfare, social service, correctional and mental health systems, have strongly reinforced Ombudsman impressions from complaint investigations about the need for major reform of how we plan and organize children's services.

All the children we spoke to gave a failing grade to agencies and services intended for their benefit. The consensus was that the agencies simply did not give the children the opportunity to be heard and have their views considered. There were no notable differences in the way young people rated so-called "intrusive" services - for example, youth corrections and child protection - and so-called "non-intrusive" services, for example schools and health services.

The major themes of messages from young people to the Ombudsman are:

- ◆ **Respect us...**
- ◆ **Listen to us...**
- ◆ **Inform us...**
- ◆ **Go to bat for us...**
- ◆ **Involve us...**
- ◆ **Don't give up on us...**

WHAT WE HEARD: What rights do children have?

Of paramount concern to the Ombudsman is the pervasive lack of awareness or incorrect information among young people and their advocates concerning children's rights. Of symbolic note, when the Ombudsman asked one group of young people about what rights they had, there was no answer for a few moments. Then one young person said, with tongue in cheek, "The right to remain silent!" Other comments by young people about their rights included:

- *I am confused about my rights and at what age I am supposed to be responsible for what.*
- *As far as I'm concerned we don't have any.*
- *Everyone but kids have human rights.*
- *People don't take me seriously about my rights and opinions. They don't believe youths should have rights or opinions. I think they should.*
- *Politically, we are nobodies.*
- *We need to be told about our rights and they should be the same whichever ministry you are involved with.*
- *As a child your rights aren't many...People in authority make decisions for you thinking they know what's best for you but in reality it could screw you up.*
- *I have no privacy or decision-making rights...even though I am a mother and live independently, my doctor keeps calling my parents and grandparents about me...*
- *Rights are taken away from youth and decisions made for them with or without the child's consent.*
- *I needed to be given more information about my rights and the rules of the game when I came into (state) care.*
- *It would be very helpful to have all our rights spelled out in one Act.*
- *Get children into the Human Rights Act.*
- *We don't have any rights we are in jail.*
- *Children in foster homes should have equal rights.*
- *Schools need to teach kids more about their rights and how to advocate better for themselves.*

WHAT WE HEARD: Do you feel respected?

Young people told the Ombudsman that in their dealings with schools and social service systems they are commonly treated as incompetent or as property owned by their parents. This was the message of young people from close, loving families as well as those who were alienated from their families and those who grew up in the care of child welfare systems.

- *Our culture devalues children.*
- *Nobody takes me seriously. I am just a kid.*
- *They think I'm too young, not smart enough to handle the information, too immature.*
- *I hate being talked down to, especially by social workers who are supposed to be my advocates.*
- *Parents want perfect kids...they often side with the teacher and don't listen to my side of the story.*
- *I am just a piece of paper to my social worker and P.O.*

One young person summed up the feeling of many of her peers concerning their need for respect when she said:

- *Adults have to remember that it's hard to learn from someone you don't respect and if you don't respect me I won't respect you.*

Sadly, some young people are close to giving up on the formal helping systems:

- *What's the point of complaining...there's a believability factor...we are kids...*
- *Street Youth Services are on our side...they are not like government services.*
- *I have given up on government.*

Others worried about pressures from some sectors not to listen to children because of their "immaturity." One young person observed that:

- *There is a backlash against disclosure of abuse...the child is not valued.*

WHAT WE HEARD: Do you feel people listen to you?

Young people very much want to participate and to be respected by service providers and adults in general. This desire is too often frustrated by entrenched adult attitudes, for example:

- *You could complain to a supervisor but you are rarely listened to and less often taken seriously.*
- *I am sick of professionals telling me about what is best for me...maybe I know better than they do.*
- *My social worker figures that I'm just a child so anything I say that she doesn't agree with she lets it go in one ear and out the other.*
- *They figure because they work for government they can control you.*
- *Adults tend to do it for us rather than with us.*
- *Talk with us and give us reasons for the decisions you make about us...you may be surprised about how reasonable we can be.*

In the words of one parent advocate:

- *Kids are not the problem...the problem is adult attitudes towards kids.*

Young people are experts at distinguishing the service providers who go to bat for them from those who see them as property or incomplete human beings:

- *A good teacher doesn't mind being corrected by a kid...they try to see things through our eyes as well as their own.*
- *Being heard is more than a social worker asking about how I feel and then ignoring what I say.*

Young people spoke to the Ombudsman about child welfare systems with patronizing tendencies that do not adapt appropriately to the developmental abilities of children. Current trends in child welfare to support families were seen as laudable by young people, (some who are parents), as long as each member of the family is heard and treated with respect and dignity. Young people spoke of their difficulty accessing services, especially when their views or interests seriously diverged from those of their parents:

- *The Ministry of Social Services won't apprehend kids anymore unless their parents agree...kids don't get a say in it.*
- *The system has the power to lock you up for your own good when THEY think you need it but you can't get treatment or into a group home when YOU want help.*

Youth who met with the Ombudsman from within correctional institutions expressed particular frustration about being seen as "write offs" by the public and not being able to get their message out:

- *This system warehouses us it doesn't rehabilitate us...the public doesn't understand that.*
- *I am not allowed to tell my side of the story to the Province because I am a young offender.*

Many young people have experienced that those in authority to listen more carefully to adults whose socio-economic status warrants it. In the words of one young person:

- *Money talks and my family has no money...what more can I say?*

WHAT WE HEARD: Are you given the information you need?

Young people realize that information is power. They told the Ombudsman that they were not routinely provided with adequate or appropriate information by service systems, for example, about service entitlements and what to do if treated unfairly:

- *Tell us how to complain as well as where to complain.*
- *We need more information about services, how to complain and who will go to bat for us when we have a problem.*
- *Kids and their parents could use a one-stop shop to simplify things.*

While sometimes suffering from information overload, many young people felt that adults disempower them by screening too much information. Young people strongly resent service providers and caregivers who "always know what's best for me." This tendency to control can alienate young people and may act to repress the natural inquisitiveness of children. In the long term, this can lead to a diminished learning experience and adult dysfunction. Overprotective professional tendencies have also led to a system that is much more comfortable talking about children when they are not present.

Of particular concern to the Ombudsman is the way children's rights are being introduced to students in many schools. There is an unfortunate tendency among some educators to confuse children's rights with codes of conduct and collective responsibilities. The impression left can be that rights are bestowed upon children by benevolent adults. As stated in her *Discussion Paper on Child Advocacy*.

Children's rights are inextricably linked to their humanness. Like all inalienable rights, they belong to the person, are not conditional on others declaring their entitlement to them, and belong to them despite their behaviour.

Of course, assuming responsibility is vital in a healthy democratic society. Ironically, meaningful avenues where they can practice increased responsibility are, too often, not available to children in schools or social service systems. The right of children to accurate and comprehensive information about their rights must be more appropriately taught and role modelled within our public schools. It must also be more consistently practiced in all child-serving systems. In the words of one parent advocate:

- *There is a false assumption that giving students rights is taking away rights from teachers or parents...*

Young people, particularly First Nations and visible minority young people, stressed to the Ombudsman the need for more information within children's services about different cultural traditions. The notion of rights and advocacy for new immigrants may not be well understood in the Canadian context:

- *Don't assume that new immigrants know all the norms of parent involvement.*
- *More education around different cultures and family structure is needed.*
- *Youth Councils need to be multicultural and include kids who have dropped out.*

- *Minority youth are discriminated against on two levels—for their race as well as their age.*

Even within the legal system, where notions of natural justice, administrative fairness and due process are, or should be, well entrenched, young people commonly find that their rights are not always properly explained to them. They experience this with child welfare, mental health and the young offender system. When told by the Ombudsman of their right to complain, many young people did not know of complaint procedures, were fearful of possible reprisal or believed that it wasn't worth it because "the system" would not listen to them. This attitude was common among young people (and their advocates) from all systems and from all walks of life. This is one reason for the existence of an Child and Youth Team within the Ombudsman Office and for our support of efforts to strengthen formal child advocacy in British Columbia.

WHAT WE HEARD: What does advocacy mean to you?

Few dispute the need for child advocacy but what does child advocacy mean to young people? They told the Ombudsman that a child advocate is:

- *someone to give you advice, to speak up for you*
- *someone who takes on your problem when you're too fed up to deal with it yourself*
- *a go-between to fight for my rights*
- *standing up for someone's rights*
- *someone who talks to you and understands you, and has been through similar situations*
- *someone who has the knowledge and means to fight for my rights when they are abuse*
- *someone that points out the good points and not the bad about you*
- *someone that would stick up for me*
- *to work along side*
- *to argue*

For young children, the first line of advocacy is the caring parent who is expert at listening to infants and can adapt to ensure their children are heard at different developmental levels. At a very early age, most children are able to express their views to adults if the adults take the time to listen carefully. When children move out into the community, and into a day care, a school or social service program, the parent role shifts from exclusive caregiver to caregiver/advocate. Many parents told the Ombudsman they could use support and education to develop their advocacy skills:

- *Parents of pre-schoolers need more information and education about the rights and service entitlements of their children.*

- *Parents need to be educated about how to go to bat for their children and then they need to teach their kids.*
- *The provincial Ombudsman should help with the training of community child advocates.*

Professionals working in the early childhood sector, child care workers, public health nurses and pediatricians are usually available to assist parents who want help and will sometimes take up systemic issues of concern to children. For example, one pediatrician-advocate wrote to the Ombudsman:

- *Young infants cannot speak for themselves so I recommend on their behalf that the topic of breastfeeding be addressed...despite the overwhelming evidence of the health and economic benefits of breastfeeding, formula marketing and pervasive misinformation continue to undermine the efforts of mothers to breastfeed their babies.*

Child advocates are very aware of the tendency for children's mental health and social service agencies to define their mandates narrowly and to intervene only after serious breakdown. In different words, the following statements reflect the experience of many young people and their advocates who spoke to the Ombudsman:

- *It's virtually impossible to get help to young children unless they are being sexually abused.*
- *There are many gaps in services to children.*
- *You gotta have a big problem to get the system to help you and then it's on their terms not yours.*
- *Why does the ministry leave kids in homes even when they are being abused?*

As children grow, their views or interests sometimes diverge from those of their caregivers. This is a normal, healthy development and most families adapt comfortably. But young people spoke frequently of a professional tendency in all sectors of public service systems to exclude children and deal only with parents. This problem is particularly acute in schools and social services.

The painful experience of some young people is that their parents, for many complex reasons, may not have the confidence, ability, willingness or resources to go to bat for them:

- *Kids without parents advocating for them give up more easily in school.*
- *They should apprehend parents not kids and make them take alcohol counselling.*

- *My mom has not been able to visit for two months because she lives too far away and can't afford to travel.*

A public health nurse told the Ombudsman:

- *There are 16, 17 and 18 year olds dying in this community...I knew them as neglected babies.*

For other young people, the simple reality is that the interests and views of a child and her parents are not always the same:

- *Mom was a role model for me to show how to advocate for myself, I couldn't do it without her help...But parents go to bat for themselves...their interests are theirs and mine are mine...sometimes their interests include some of mine.*

Front-line professionals wear many hats in the children's service sector. They may be mentors, custodians, counsellors, guardians or child advocates. The decision-making power vested in professionals also means that they are often on the receiving end of advocacy. The credibility and skill of community advocates who go to bat for children or their families becomes an important factor.

- *Social workers have to deal with advocates who are not well trained and who seem to be more interested in their own agendas than the kids.*
- *The danger of advocacy is that it can become adversarial and ends up not helping kids...we prefer a mediative approach.*

It cannot always be assumed that front-line staff play an advocacy role for children. In cases, for example, where the views and interests of a parent and a young person diverge, social workers may be seen as going to bat for the parent. It is difficult to advocate for a young person if they do not see you as their advocate:

- *Front line staff are definitely not advocates in this institution.*
- *Teachers see advocacy as teacher bashing.*
- *Front line workers should be advocates for kids...mine is, but too many aren't.*

Many public services to children are provided through contracts between public authorities and individuals or community organizations. For some children, foster parents and youth outreach workers are the front line of service delivery. These advocates told the Ombudsman about one important barrier to effective child advocacy - the fear of reprisal. In the words of one long-time contracted service provider:

- *We risk biting the hand that feeds us every time we go to bat for a kid...child advocates are seen as pests in this community.*

For many young people, the best advocacy is self-advocacy:

- *If adults gave youth groups the proper support and training we could take over some of the advocacy work...kids should advocate for other kids.*
- *Teach me how to advocate for myself...you don't always have to do it for me you know.*

But a system based on the "professional expert model" does not always appreciate or nurture self-advocacy:

- *I want an advocate to be unbiased...I am sick of professionals telling me what is best for me...maybe I know better than they do...*
- *When I try to advocate everyone thinks I'm trying to be smart so why bother?*
- *Legal Aid lawyers are not listening to kids let alone representing them.*

Also, private and public child care systems need more encouragement and support to prepare young people to be their own best advocates. In part, this failure to do so is rooted in a widespread belief, reflected in laws, policies and practices, about the incompetence of children. There is a tendency for children's services to seek compliance from children rather than engaging in the more onerous, and risky, task of empowering them. Ombudsman consultations with young people and their advocates have reinforced impressions from individual complaint investigations about a deep-seated malaise in this public service sector. As one senior youth service practitioner said at a recent conference on children:

- *(the) sense of joy and play is lost.*

For the sake of children, advocacy must help the system to restore these child-centred values.

WHAT WE HEARD: How can you be involved in decisions that affect you?

Overwhelmingly, young people told the Ombudsman that current structures within all service sectors are inadequate in providing a meaningful voice for young people. In local communities, a few bright spots are apparent, for example:

- Child Advocacy Steering Committee in Victoria
- Federation of B.C. Youth in Care Networks
- Kamloops Youth Advocacy Council
- Parent Advisory Council Advocacy Project in School District No. 61
- Ray Cam Youth Council in East Vancouver
- Youth for Youth Committee in Parksville/Qualicum
- Youth Voice in Campbell River and Vancouver

These types of forums, in the words of one young person "make our community focus on the positive rather than the negative youth attributes."

Increasingly, if unevenly, children's authorities are recognizing the wisdom of consulting with "customers." The "customer" is not usually seen to be the child. Youth are now represented on a number of government-wide committees. However, there is a long way to go before child-serving systems provide adequate and appropriate opportunities for young people to practice democratic, participatory skills. For example, school and district Student Councils should be a positive mechanism for student input to plans and decisions that affect them. But they rarely accomplish this vital objective:

- *Student Councils have no power, they are figureheads, they are there just to make us feel good.*
- *Our Student Council doesn't represent all kids just the high flying ones.*
- *Student Councils are a joke...most students don't know what they do...they mostly organize dances.*
- *It's a waste of our time to go to (District) Student Council meetings because the superintendent sets the agenda and they don't listen to what we have to say anyway.*
- *We are a lukewarm Student Council because we have been warned ...we have been put in our place.*

Ombudsman concerns about student input to school systems will be more fully discussed in her upcoming Report on Public Schools.

After a number of meetings with young people in correctional facilities, the Ombudsman informed the Ministry of the Attorney General of her concern about the relative absence of effective Resident Councils. Like their school counterparts, where they exist, Resident Councils in correctional facilities are paid only lip service by administration:

- *It (Resident Council) is better than a complaint box but you can't question the rules.*

- *All local public institutions that service teenage youth need to seek youth representatives and develop ways to gather youth input in the planning and delivery of services...*

One of the most innovative and productive ways suggested by young people for involving them in a more meaningful way is in the training of professionals who work with them:

- *Kids should be used to hire and train social workers and teachers.*

The Ombudsman supports this idea and urges the relevant professions, employers and training institutions to incorporate this idea into their training programs.

WHAT WE HEARD: Are we supporting you enough?

A common plea to the Ombudsman from many young people was for service providers to "hang in there" with them and help them learn from their mistakes. For many young people, the system gives up on them too easily. The widespread tendency of schools, mental health and social service agencies to screen out young people with difficult behaviour is tragic but common. Rather than develop the staff skills and resource supports necessary to help these young people (many of whom are victims of neglect and abuse), our systems systematically seek ways to exclude them. Ironically, young people who most need the school system, including those who are learning disabled or emotionally disturbed because of neglect or abuse, are the first to be ejected from that system:

- *Schools would rather kick you out than teach you how to handle problems better.*
- *My brother got labelled a misfit...no one went to bat for him...the system gave up on him...actually he was learning disabled.*
- *They kick us out of school for being bad kids...they don't realize that that is exactly what we wanted.*
- *Alternate school students are seen by the school as second class citizens...have you ever wondered why they get put in portables?*

In the words of one high achieving student:

- *Schools should be for all kids not just scholars.*

Young people in the social service systems expressed serious frustrations with the lack of willingness of those systems to stick with them. The exclusion of young people with emotional problems is often achieved through passing them from one system to another:

- *The Ministry of Social Services drops you as soon as you get into the corrections system.*
- *Social workers like to think you have mental problems so that they can pass you off to another agency.*

Shopping for services in a fragmented, mandate bound system is not easy for young people or their advocates:

- *You gotta have a big problem to get the system to help you and then it's on their terms not yours.*
- *I keep getting referred to another counsellor.*
- *Youth have to keep going to different places to get help...that's frustrating...kids don't differentiate between ministries like adults do.*
- *It's hard to figure out who is accountable for what in the children's service sector...it's so inefficient too.*

Some advocates see the problem as professional "buck passing" where:

- *We have overvalued professionals and specialization...We have been driven by our job descriptions not the needs of children and youth.*

Or, in the words of one young person:

- *Teachers have more protection than students do in the school system.*

Although the professional literature acknowledges that children have a different sense of time, practices appear more designed to meet professional needs:

- *When I need help I need it right away...I can't wait for an appointment in two weeks time...*
- *Kids are not nine to five people you know but social services are.*
- *They (professionals) should come to where we are, not expect us to go to their offices all the time.*

According to young people, age discrimination is widespread in our communities and in our public services. The progress of women, aboriginal people, people with disabilities and other marginalized people in addressing various forms of discrimination have far surpassed the progress of children and youth in addressing problems of ageism:

- *The present system is very discriminatory against youth and very ageist...*
- *My community doesn't like children...*

Age discrimination is apparent in unemployment statistics where the rate of unemployment of young people is double that of adults. Also, discrimination against young people is often felt in housing, particularly for those young people who must prematurely leave home:

- *Landlords don't like kids of any age...housing is a big problem.*
- *Many young people find themselves living in substandard housing - rooming houses or unfinished basements with dirt, alcohol, drugs and crime as their neighbours.*

Through a meeting with the Ombudsman, one young person pleaded to adults in his community:

- *Don't be scared of me just because I'm a teenager...that's discrimination...we aren't all the same you know.*

Of particular concern to government, youth from state care spoke positively about initiatives to provide limited continuing services to former wards to the age of twenty-one. But they also pointed out that natural families provide support beyond this age (the average age of young people leaving home is reportedly twenty-four). The commitment to "stick with" young people is no more powerfully apparent than for those who have called the state "parent":

- *We hoped that post-majority services would go to 24 not just 21.*
- *There is a big gap in how we deal with 16 to 24 year olds in this province.*
- *Many youth only start to get their life together in their early twenties.*

From the perspective of young people and their advocates, British Columbia's public services must be reformed to tap the positive energy of young people; to reinforce the high regard in which we should hold them; and to empower them through teaching, role modelling and real consultation so that they become their own best advocates.

As we reform our services and our adult attitudes towards young people, we have a responsibility to take the time to hear them and to be tolerant of the human error that is based often in youthful inexperience:

- *Don't give up on us so easily...give us a second chance...we don't have a lot of experience.*

PLEASE GIVE US YOUR FEEDBACK HERE!

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