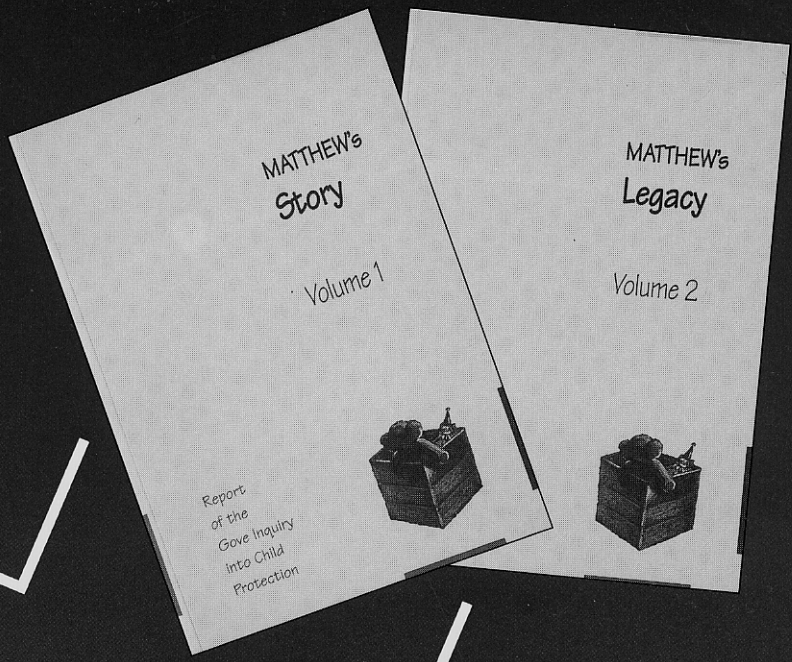
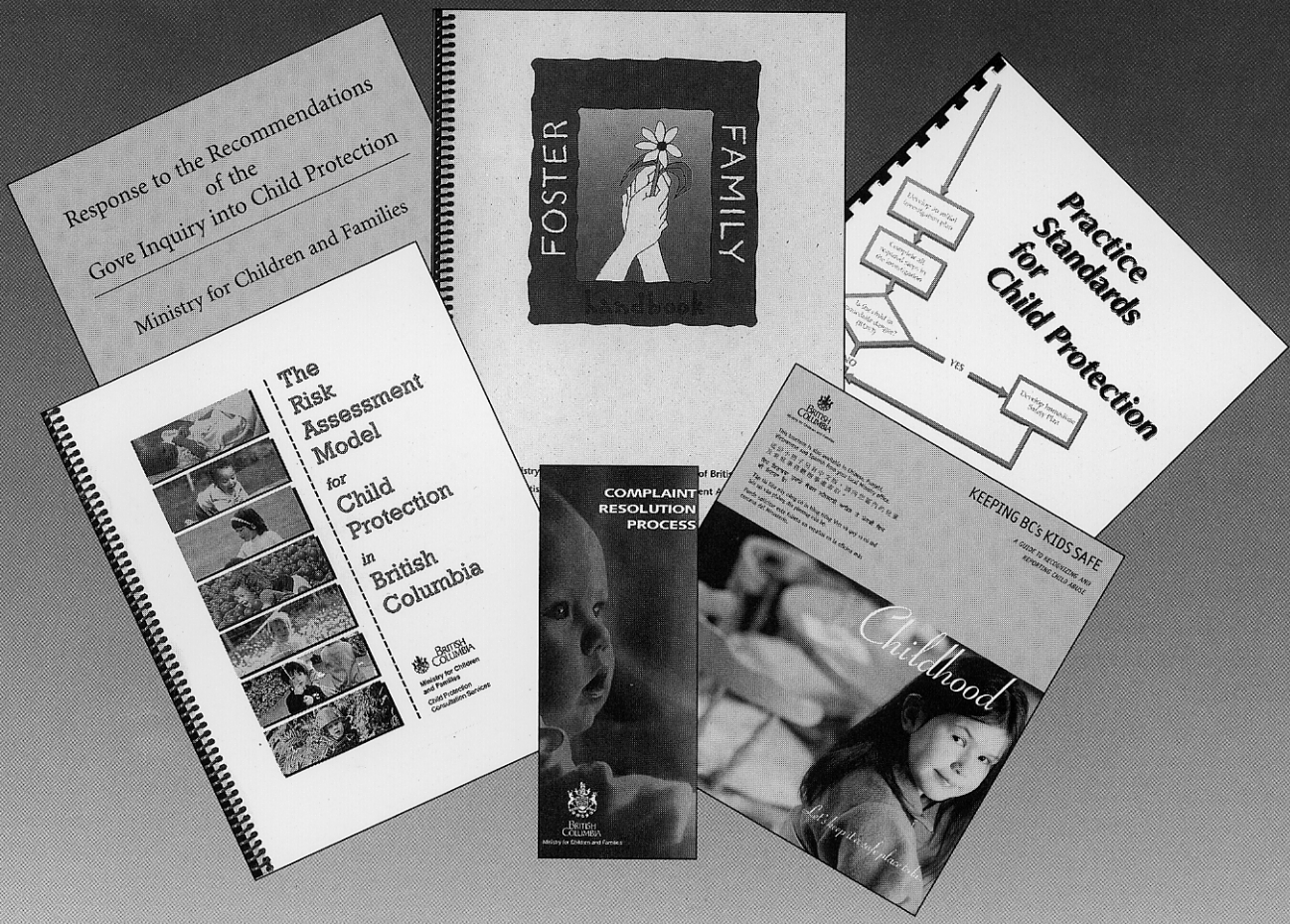
Public Report No. 36
March 1998

to the Legislative Assembly
of British Columbia

Getting There





Ombudsman PROVINCE OF BRITISH COLUMBIA

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of British Columbia

Getting There

A Review of the Implementation of
the Report of the Gove Inquiry into Child Protection

Ombudsman PROVINCE OF BRITISH COLUMBIA

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March 4, 1998

The Honourable Gretchen Brewin
Deputy Speaker of the House
Parliament Buildings
VICTORIA BC V8V 1X4

Dear Ms. Brewin:

In November 1995 the Gove Inquiry into Child Protection was completed and Judge Gove made his report to government. His recommendations were primarily intended to address child protection issues arising out of the tragic death of Matthew Vaudreuil. Many of his recommendations went beyond the single issue of child protection and were designed to make fundamental change to improve the quality of life of children in British Columbia.

Gove's Recommendation 118 invited the Ombudsman to oversee the implementation of all of the recommendations contained in his report. Just prior to the Inquiry being announced by government, the Ombudsman had commenced an investigation into the review of Matthew's death. In keeping with our usual practice when government responds, we held our review in abeyance pending the outcome of the Inquiry. The Ombudsman has had a long history of interest in matters affecting children and youth. Ombudsman Public Report No. 22 (1990), also arising from a tragic death of a youth, called for the need to improve the integration of services from various child-serving ministries. At the conclusion of the Inquiry, Judge Gove determined that the Ombudsman was the Office perfectly situated to "watch-dog" government's implementation of his recommendations.

The Gove recommendation regarding the Ombudsman's oversight role read:

> *118. The province should report to the Ombudsman:*
>
> *a. within two months after delivery of this report, on its progress respecting the appointment of the Commissioner for Transition to the Ministry for Children and Youth, and*
> *b. within six months after delivery of this report, on its plans for implementation of the other recommendations contained in this report.*

The Ombudsman immediately advised government of her intention to follow the recommendation. Initially, our attention focused on having a Transition Commissioner appointed within two months of the report, in keeping with the Gove recommendation that read:

> *112. The Lieutenant Governor in Council should appoint, within two months after delivery of this report, a Commissioner for Transition to the Ministry for Children and Youth.*

That was done. Shortly thereafter, it became apparent that in order for fundamental change to be possible, two steps had to be taken. First a Ministry for Children and Families had to be established to provide an integrated service model, and an independent commissioner for children and youth had to be put into place to review all deaths and critical injuries for children in care. The Transition Commissioner agreed with the Ombudsman and made this part of her September (1996) Report to the Premier. These were done.

Why is all of this important to the Ombudsman? The role of the Ombudsman is to promote fairness within the administrative practices of government. Fairness, in part, means that government follows through on its commitments to the changes it has agreed to or explains to the public why a recommendation has been abandoned.

When government implements the changes, the Ombudsman must review whether it has done so in a manner that is itself administratively fair. That means for example, is there a clear legislative mandate? Are there policies in place that fully explain the changes and that are consistent with the governing statute? Are there brochures, videos and other information available to children, youth and their families that explain the new Ministry for Children and Families and the new Children's Commissioner? Are these available in an age-appropriate and culturally sensitive format? Has government informed children and youth of their rights, their opportunity to be heard and their right to seek review or appeal decisions that affect them?

This audit of the implementation of the Gove Report is not about whether or not the creation of the new Ministry was a good idea. The government created the Ministry for Children and Families in response to the Gove Report. The Ombudsman has attempted through this investigation and report to bring everyone up to date on the status of the implementation of the Gove recommendations and to bring closure on his report. Everyone in BC who serves children will agree that this has been a time of great change and challenge. Some would argue with some of the changes proposed by the Gove Inquiry. Others would complain that the new Ministry has not accomplished all that was

envisioned by Judge Gove. Some would report that there are children who are being served better by the new system of integrated case management. Others would disagree. Some want the clock to be turned back and to return to the multi-ministry model. Others claim that integration of the services for children will make little change in the quality of their lives.

In this report, where government has chosen to follow through and fully implement the Gove Inquiry's recommendations, this Office has not questioned these decisions but simply reported to the public what has been done. My report canvassed the status of each of the recommendations and asked the question, has it been implemented, in part or in full? If not, why not? Is the recommendation no longer necessary or appropriate? Is the Ombudsman able to bring closure to the Gove report and develop new recommendations to follow up on in the future?

Judge Gove made a significant contribution through his Inquiry and his Report. He and those working for the Inquiry are to be commended for their thoroughness and creativity. Now, however, it is time to move on. Institutional and individual criticisms and fears have plagued everyone working for children for long enough. All of those working in this field are entitled to closure on this chapter in the development and improvement of services for children and youth in this province and to get on with the implementation of the changes designed to better serve our children and youth.

It is important to recall that not long ago children and youth did not have a Minister of the Crown responsible in Cabinet for their safety and well-being. It is worth remembering that not long ago in BC the death of a child would not be newsworthy. All the residents of this province have had their consciousness raised by the events leading up to and following the Gove Inquiry. Many seem quick to criticize the work of the new Ministry. Accountability will inevitably lead to criticism. This is healthy. What should be avoided is superficial analysis of problems that can only lead to superficial solutions. Anecdotal comment should be resisted. No one should associate lack of understanding of how to do something today with the lack of will or capacity to do what is best in the future.

The Ombudsman wants to ensure that government listens to those it serves. We have a Ministry responsible for listening to children and youth and the families that support them. The Ministry is responsible for ensuring that children and youth are being listened to, having input into decisions that affect them, having access to review and appeal mechanisms, having access to a system that is child-centered and easily accessible. These are some of the elements of a public service that makes a future for healthy and safe children a reality. That is what government is trying to achieve in partnership with all of us.

Getting There, therefore, achieves four things:

1. Reports when a Gove Recommendation has been "Fully implemented" by government;
2. Reports where government has not achieved full implementation but is "Committed" and the Gove Recommendation is a "Work in progress;"
3. Reports if the Gove Recommendation has not been acted upon since it is no longer appropriate or reasonable to expect government to implement; and
4. Recommends where the work in progress should continue when there can be a modification of the Gove Recommendation. In these cases, I have made Ombudsman recommendations that have been developed as a result of our investigation and report on government's progress on implementing Gove. Government has had notice of these recommendations and I intend to track government's progress on them.

In conclusion, it remains open to government to pursue any number of matters outstanding from the Gove Report. That is their choice. For the purposes of Ombuds work, my role in tracking the Gove Report is complete.

It is time to move forward. The Ombudsman is committed to her role of monitoring government's progress in acting on the recommendations contained in this Report. ***Getting There*** is about moving forward in our common interest of protecting children. ***Getting There*** is about holding government accountable for failure to implement a recommendation, updating the recommended changes where appropriate and commending government where progress has been made. ***Getting There*** is another small step towards a place where we are satisfied that every effort is being made to guarantee the safety and well-being of all children and youth in BC.

Yours very truly,

Dulcie McCallum

Dulcie McCallum
Ombudsman for the Province of BC

Table of Abbreviations

AG	Attorney General
ARD	Audit and Review Division
BCASW	BC Association of Social Workers
BCGEU	BC Government and Service Employee Union
BRSW	Board of Registration of Social Workers
BSW	Bachelor of Social Work
CF&CSA	Child, Family and Community Service Act
CIHR	Child in the Home of a Relative
COA	Central Operating Agency
FAS/E	Fetal Alcohol Syndrome/Effect
FTE	Full Time Equivalent
GAIN	Guaranteed Annual Income for Need
KSA	Knowledge, Skills and Abilities
MCF	Ministry for Children and Families
MIS SWS	Management Information System for Social Work Systems
MSS	Ministry of Social Services
MSW	Master of Social Work
PSERC	Public Service Employee Relations Commission
ROO	Regional Operating Officer
SPMH	Services to People with Mental Handicaps
SPO	Special Project Officer

A. MINISTRY FOR CHILDREN AND FAMILIES

1. Values

a. Child welfare constituency

Gove Recommendation 95: The province's child welfare constituency should include all children.

Original Rationale :
British Columbia has adopted a "residual" or reactive approach to protecting children. The system acts to protect a child only when it receives information that the child has been abused or neglected, or is at serious risk. This means that children often have to suffer maltreatment before protective measures are taken, and the abuse and neglect of children at the lower levels of risk go unnoticed.

Status:
Fully implemented.

Ombudsman Observations:

Although the ***Child, Family and Community Service Act (CF&CSA)*** continues to reflect a reactive approach, the fact that the provincial government has brought all child-related programs into one Ministry is a clear indication of movement towards a position that all children constitute the constituency. The "Building Blocks" projects discussed below, and the mandate of the Children's Commissioner to review the deaths of *all* children in the province and to make recommendations to prevent similar deaths in the future are specific examples of this movement.

b. Protection of the child is paramount

Gove Recommendation 27: The Ministry's policy should state clearly that the protection of the child is paramount, and should not be overshadowed by a desire to help parents improve their lives and abilities.

Original Rationale:
A statement by the then-Minister of Social Services in 1993 suggested a fundamental shift in values from a child-centred system to a family-centred system. Social workers were confused whether they were to protect children or support families. This problem became even more critical when it was combined with a commitment to a "strengths" approach to case planning and assessment, which focused on enhancing the abilities of parents rather than on ensuring the safety and well-being of children.

Status:
Fully implemented.

Ombudsman Observations:

Section 2 of the ***CF&CSA*** was amended in response to one of Judge Gove's interim Recommendations, so that it now reads:

> *This **Act** must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles: . . .*

This amendment is important because the paramountcy test is contained in the legislation. This statement is repeated in the Policy Manual, Vol. 2. From an Ombudsman's perspective, this change is important and goes beyond Judge Gove's Recommendation.

c. Preventive programs

Gove Recommendation 96: The province should establish a preventive program similar to the State of Hawaii's Healthy Start program, and should strengthen the capacity of the province's public health nurses in the early identification of children at risk.

Original Rationale:
The only effective way to ensure that the child welfare constituency includes *all* children is to begin at birth. Starting with the assumption that all children must be assessed for potential risk factors greatly reduces the chances that children at risk will be missed. Public health nurses believe that they could play a greater role in primary and secondary prevention of child abuse, including the early identification of children at risk. Currently, interventions for families with several risk factors and limited coping skills are often short-term, with no follow-up.

Transition Commissioner Report:
The Transition Commissioner recommended that the new Ministry should finalize the work of the Office of the Transition Commissioner in developing and implementing a major strategy focused on prevention and early intervention. Appendix 7 of her report set out her five-year Early Intervention and Prevention Strategy, focusing on:

- public education,
- integrated, participatory and comprehensive service delivery, and
- standards, evaluation and monitoring.

Status:
Committed; work in progress.

Ombudsman Observations:

The Ministry is establishing ten regional pilot projects for its "Building Blocks" program:

- *Kamloops* - Families First
- *North Delta, Newton, Whalley/Guilford* - Healthy Families Initiative
- *New Westminster* - Healthy Lives
- *Port Alberni, Duncan and Nanaimo* - Healthy Beginnings
- *Port Hardy* - North Island Family Project/North Island FAS/E Initiative
- *100 Mile House and Bella Coola* - Comprehensive Pre-and Post-Natal Family Supports
- *Terrace/Kitimat/Hazleton and Dease Lake/Stikine* - Breaking Barriers/Opening Doors
- *Dawson Creek* - Healthy Beginnings, Healthy Lives
- *Burns Lake* - FAS/E Prevention Project
- *Vancouver* - Family Connections.

Judge Gove was focusing specifically on identifying families at high risk of abuse and neglect, and contemplated a universal program through the public health system, so that *all* new babies could be monitored. The Transition Commissioner proposal and the Ministry's pilots appear to be adopting a broader health-based approach. This may be appropriate for a new Ministry that has a broad child welfare mandate, but it does not appear to be wholly responsive to Judge Gove's Recommendation.

Ombudsman Finding and Recommendation #1:

I find that this Gove Recommendation has not been fully implemented, although the Ministry has indicated an intention to implement.

I recommend that the Ministry extend beyond the pilot project model to enable all communities to put forward their own program proposals to the Ministry that will focus on prevention, well-being and outcomes for all children from birth. While it remains the Ministry's prerogative to approve a program, the invitation ought to be extended to all communities.

2. Organization

a. Creation of new Ministry

Gove Recommendation 106: Provincial responsibility for all child welfare services, currently scattered through numerous ministries, should be brought together into a new Ministry for Children and Youth.

Original Rationale:
The separate-ministries-and-Secretariat model, which government developed in response to the Ombudsman's Report No. 22, has not achieved and cannot achieve coordinated, multidisciplinary child welfare services. The only realistic alternative is to bring all provincial child welfare responsibilities together into a single authority. Having considered the options of a Crown corporation, a statutory society, a sub-Ministry and a new stand-alone Ministry with undivided loyalty to the interests of children, the stand-alone new Ministry is recommended, because it would best ensure that the safety and well-being of children will be the paramount consideration.

Transition Commissioner Report:
The Transition Commissioner supported Judge Gove's Recommendation, but broadened it to encompass children, youth and families: "Bringing the services of the five ministries together will ensure that children, youth and families have access to a continuum of services and programs, from the voluntary and preventive to the required and treatment oriented."

Ombudsman Report No. 22
Recommendation #1

A single authority within government be established with a formal mandate, executive powers and an adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration of publicly funded services to children, youth and their families.

Status:
Fully implemented.

Ombudsman Observations:

I would be remiss if I did not refer to the fact that there are some people both in and out of government who are concerned about the single stand-alone Ministry. Many of those who express concern are employees directly and dramatically affected by the change and turmoil associated with the service and program transfers. In the BCGEU Report Card on the Ministry for Children and Families released November 26, 1997, "many staff question[ed] the wisdom of integrating very different types of clients into a single delivery system." The extent to which creating a Ministry for Children and Families will itself contribute to better outcomes for children is difficult to measure in the short term. While the Ministry must continue to be sensitive to the disruptive effect change of this magnitude will continue to have on staff for some time, everyone in the system must work towards understanding the importance of the status such an arrangement gives to children and youth, and supporting principles underlying an integrated child welfare system.

b. Programs transferred to the Ministry

Gove Recommendation 107: Provincial responsibilities which should be brought together include:

- *from the Ministry of Social Services*, Family and Children's Services, including child protection, family support, guardianship and adoption
- SPMH community support services for children with mental disabilities, programs for children with special needs, daycare subsidies and the Community Projects Funding Program, and some income assistance services for families with children and for youth;
- *from the Ministry of Attorney General*, Youth Probation and related community justice services, Youth Containment Centres and Family Court Counselling;
- *from the Ministry of Education*, special needs educational services, and school-based child and youth care workers;
- *from the Ministry of Health*, alcohol and drug treatment services for children and youth, public health nursing services relating to children and youth, forensic psychiatric services related to children and youth, i.e. child and youth mental health services and infant and child development programs; and
- *from the Ministry of Women's Equality*, child care (daycare).

Original Rationale:
Administering all these programs through a single provincial Ministry would dramatically improve the province's ability to develop a multi-disciplinary, coordinated and more comprehensive approach to child welfare.

Status:
Committed; work in progress.

Transition Commissioner Report:
The Transition Commissioner gave a more detailed breakdown of programs within the five ministries that should be transferred to the Ministry than Judge Gove did. She named some programs not recommended by Judge Gove including:

- *from Ministry of Social Services (MSS):* services for adults with mental handicaps or multiple disabilities, health care and dental services, Healthy Kids,

- *from Ministry of Attorney General*: alternative measures (diversion), day programs, residential attendance programs, inspections, investigations and standards and the public trustee,
- *from Ministry of Education:* social equity programs, and
- *from Ministry for Women's Equality:* stopping the violence.

She also excluded several programs recommended by Judge Gove: from MSS, income assistance for families with children and for youth; and from AG, family court counselling.

Ombudsman Observations:

The Ministry's response to the Transition Commissioner's recommendations for program transfers is summarized as follows:

- *Ministry of Social Services*: all programs recommended by the Transition Commissioner, which is more than those recommended by Judge Gove;
- *Ministry of Attorney General*: all programs recommended by the Transition Commissioner except the Public Trustee, and everything recommended by Judge Gove except family court counsellors;
- *Ministry of Education, Skills and Training:* all programs recommended by the Transition Commissioner except Crime Prevention and sexual abuse interventions;
- *Women's Equality:* all programs recommended by the Transition Commissioner and Judge Gove;
- *Ministry of Health:* everything recommended by the Transition Commissioner except community care facilities licensing, medical health officers and the public health engineer. The Ministry contracts its public health nursing functions through the regional health authorities.

Since the Transition Commissioner's Report more programs have been transferred to the Ministry than Judge Gove recommended. The only two programs that Judge Gove recommended be transferred, which were not, are family court counsellors and some income assistance services for families with children and for youth.

The role of the family court counsellors forms part of a major family justice initiative within the Ministry of the Attorney General.

Ombudsman Finding and Recommendation #2:

I am satisfied that the decision regarding Family Court Counsellors is reasonable and that there should be closure on this part of Gove's Recommendation.

There were two exceptions to Gove's Recommendation about programs from the Ministry of Social Services being transferred, including some income assistance services for families with children and youth:

1) **Child in the Home of a Relative (CIHR) is a program that continues to be provided by the Ministry of Human Resources. Proclamation of s. 8 of the *CF&CSA* will transfer responsibility to the Ministry. Section 8 reads as follows:**

   8(1) A Director may make a written agreement with a person who (a) has established a relationship with a child or has a cultural or traditional responsibility toward a child, and (b) is given care of the child by the child's parent.
   (2) The agreement may provide for the Director to contribute to the child's support while the child is in the person's care.

2) **The Ombudsman has reported in previous annual reports on the problems encountered by young people in need of supports to live away from their families. Many of these youth apply for income support to Income Assistance programs. These programs were designed with adult clients in mind and do not allow the circumstances of young people in transition to be considered when determining eligibility for assistance. Nor do adult income support programs meet the needs of these youth.**

   Section 9 of the *CF&CSA* would enable youth to make agreements particular to their circumstances when they are in need of support. Section 9 of the *CF&CSA* has not yet been proclaimed. It reads as follows:

   9 (1) A Director may make a written agreement with a youth who needs assistance and who (a) cannot, in the opinion of the

Director, be re-established in the youth's family, or (b) has no parent or other person willing or able to assist the youth.

(2) The agreement may provide for residential, education and other services to assist the youth.

(3) The agreement must include a description of the services to be provided by the Director and the goals to be met by the youth.

(4) Before making the agreement, the Director must (a) consider whether the agreement is in the youth's best interests, and (b) recommend that the youth seek advice from an independent third party.

(5) The initial term of the agreement must not exceed 6 months, but the agreement may be renewed for terms of up to 6 months each.

(6) No agreement under this section continues beyond the youth's 19th birthday.

(7) For the purposes of this section, "youth" includes a person who (a) is under 16 years of age, and (b) is married or is a parent or expectant parent.

I find that income support programs for youth have not been transferred from the Ministry of Human Resources to the Ministry for Children and Families.

In the case of s. 8, government must decide whether CIHR is a program for the direct benefit of children or an income supplement for relatives. If a determination is made that it is the former, I recommend that government consider proclamation of s. 8.

I recommend that government reconsider enactment and proclamation of s. 9 of the *CF&CSA* as soon as is practicable.

With respect to two programs that were transferred that went beyond Recommendation 107, services to adults with mental handicaps from Social Services and drug and alcohol services to adults from the Ministry of Health, concerns were raised during this investigation about the appropriateness of these transfers. I am tracking these concerns as Ombudsman initiated investigations that relate to adults separate and apart from this report since the complaints involve services to adults.

c. Organizational structure

Gove Recommendation 108: The Ministry for Children and Youth's main responsibilities should be:

a. policy development, including research and inter-ministerial coordination,
b. design of province-wide child welfare services,
c. training in all aspects of child welfare,
d. quality assurance, including:
- setting province-wide child welfare and guardianship standards,
- setting practice standards
- licensing child welfare resources, and
- performing practice audits

e. financial management, including:
- funding child welfare authorities, and
- performing financial audits.

f. operations, including:
- coordinating with Regional Child Welfare Boards, and
- managing provincial programs such as youth containment centres.

Original Rationale:
Having concluded that the delivery and management of child welfare services should take place at the community and regional levels, respectively, it was determined that certain administrative and governance functions should be retained provincially.

Transition Commissioner Report:
The Transition Commissioner's proposed organizational chart is generally consistent with Judge Gove's Recommendations (although functions are differently clustered), with several exceptions. First, the 20 regional operating agencies would not report to regional boards, but to the Minister. Second, child protection social workers would report to a provincial Director, not to regional directors. Third, there would be no provincially-operated services such as youth containment

Status:
Fully implemented.

centres. Fourth, a working group of seven Cabinet ministers and a representative of the Premier's Youth Secretariat should be established, to ensure the smooth establishment of all functions of the new Ministry, and to provide the political leadership, direction and planning that is required to integrate the ongoing work of the line ministries.

Ombudsman Observations:

The province is divided into 20 regions, which coincide with the health regions. Each Regional Operating Agency is administered by a Regional Operating Officer (ROO), who reports directly to the Deputy Minister. The Victoria headquarters, known as the Central Operating Agency, is administered by a Central Operating Officer, who has associate deputy minister rank and reports to the Deputy Minister. Within the COA there are six division heads, who report to the Central Operating Officer:

- Regional Support Division
- Corporate Services Division
- Governmental Relations Division
- Adult Services Division
- Audit and Performance Management Division
- Child Protection Division

There were 758 Full Time Equivalents (FTEs) in the headquarters operation when the Ministry was established. Through reorganization, that has now been reduced to 350-400 FTEs.

d. Reporting to the Ombudsman

Gove Recommendation 117: If the Ombudsman supports the recommendations contained in this report, the Ombudsman should monitor the Ministry of Social Services' implementation of the interim reforms and the province's development of the proposed new child welfare system, and report to the Legislative Assembly as appropriate.

Gove Recommendation 118: The province should report to the Ombudsman:
a. within two months after delivery of this report, on its progress respecting the appointment of the Commissioner for Transition to the Ministry for Children and Youth, and
b. within six months after delivery of this report, on its plans for implementation of the other recommendations contained in this report.

Original Rationale:
Reforms of the magnitude contained in this report must be followed through, notwithstanding the shifting of political values and priorities. In the Canadian system of government, the Ombudsman is relied on to keep such important public policy issues at the forefront of public attention.

Status:
Fully implemented.

Ombudsman Observations:

Judge Gove delivered his Inquiry report to the provincial government in late November 1995.

On January 23, 1996 the Minister of Social Services delivered to the Ombudsman her first interim report, setting out the Ministry's progress to date on implementing the interim reforms contained in Recommendation 116. The Transition Commissioner was appointed February 1, 1996. On March 26, 1996 the all-party Special Committee to the Legislature into the Gove Inquiry held its first meeting.

On September 17, 1996 the Transition Commissioner reported to the Premier, recommending immediate and fundamental system change as Judge Gove proposed, including the appointment of a Children's Commissioner, the dismantling of the Ministry of Social Services and the transfer of all child, youth and family services to a new Ministry for Children and Families.

Getting There

On April 24, 1997, I made a submission to the Special Committee of the Legislature into the Gove Inquiry, at the Committee's request and as part of my commitment to Gove's Recommendation 117, a copy of which submission is Appendix 1 of this Report.

I will track the implementation of my recommendations contained in this Public Report No. 36, ***Getting There.***

3. Legislation

a. Aboriginal ancestry

Gove Recommendation 77(a): In order to achieve the early and timely determination of certainty about aboriginal ancestry for purposes of notice, the Inquiry recommends two amendments to the Child, Family and Community Service Act:
a. Define "aboriginal ancestry" so that the Ministry will know who to notify.

Original Rationale:
Judges and lawyers advised the Inquiry that the term "aboriginal ancestry" is vague and will produce uncertainty. If a claim of aboriginal ancestry is not raised until the last stage of proceedings, it may harm the child's long-term interests.

Status:
Not implemented.

Ombudsman Observations:

The Ministry takes the position that there is no need to implement this recommendation as aboriginal ancestry is addressed in current legislation and practice. Social workers have a duty to make inquiries to determine if a child is aboriginal in accordance with the definition in the ***CF&CSA***, in which case special notice provisions and best interest considerations come into play.

The repealed ***Family and Child Service Act (FCSA)*** extended only to status Indians, and this has been a source of irritation to First Nations, who feel that the special considerations contemplated in the new legislation should apply to all aboriginal people.

The approach taken in the new legislation is "self-definition." If a child 12 or over or, in the case of a child under 12, his or her biological parent considers him-or herself to be of aboriginal ancestry, the Ministry will accept that and not look behind it. Hence, persons who identify themselves as, for example, non-status or Metis, may "opt in," in which case the child will be an "aboriginal child," triggering the application of several sections in the ***CF&CSA***.

Ombudsman Finding:

The Ministry has not followed this recommendation. I am satisfied that there should be closure on this recommendation by Judge Gove. I find that to pursue implementation of Gove's Recommendation would be counterproductive and inconsistent with the principle of self-determination. The definition of "aboriginal child" in s. 1 of the ***CF&CSA*** embodies the principle of self-determination and is consistent with the Guiding Principles contained in subsection 2(f) of ***CF&CSA*** that promote the cultural identity of aboriginal children.

b. Paramount considerations

Gove Recommendation 68: The opening words of s. 2 of the Child, Family and Community Service Act should be rephrased to read: "This Act shall be administered and interpreted in recognition that the safety and well-being of a child shall be the paramount considerations, and in accordance with the following principles....."

Original Rationale:
Although the principle was always intended, Gove was concerned that the principle was not articulated in the ***CF&CSA*** in a way that makes the safety and well-being of a child paramount over all other considerations.

Status:
Fully implemented.

Ombudsman Observations:

Section 2 of the ***CF&CSA*** was amended in accordance with this recommendation in 1995.

c. Early determination

Gove Recommendation 69: The Child, Family and Community Service Act should be amended to state that the right of children to early determination of decisions relating to them is paramount, and that the onus should rest on any other party to show that its interests should take priority over those of the child.

Original Rationale:
Although subsec. 2(g) establishes the principle that decisions relating to children should be made and implemented in a timely manner, several other sections seem to whittle that principle away: ss. 35, 37(2), in which the court will need to balance the interests of children, family, lawyers, the Director and court availability.

Status:
Not implemented.

Ombudsman Observations:

The Ministry takes the position that the ***CF&CSA*** reflects this in its statutory Guiding Principles. Subsection 2(g) of the ***CF&CSA*** already directs courts and those responsible for the case to proceed in a timely manner to benefit the child. This requirement is also consistent with the principles of administrative fairness.

The Ministry is also concerned that, if this recommendation is adopted, courts may have to bump criminal and ***Young Offenders Act*** cases to accommodate child protection cases. The Ministry questions how it can direct a court on how it will decide which cases it will hear in which order. It is up to the court to determine its own procedures and priorities.

In Judge Gove's view, children in need of protection are at least as entitled to early hearing dates as those facing a criminal charge.

Ombudsman Finding and Recommendation #3:

I find that this recommendation has not been implemented, but I am satisfied that there can be closure on this recommendation by Judge Gove.

I recommend that the Ministry, working with the Ministry of the Attorney General, strike a committee to explore *all* of the reasons for delays in court decisions regarding children and youth, and to be guided by subsec. 2(g) of the *CF&CSA* in their deliberations. The well-being of a child must be paramount and cannot be left in limbo because of the interests of third parties. The Committee should consider whether legislative change is required to assist the courts.

d. Opportunity to express views

Gove Recommendation 75: The *Child, Family and Community Service Act* should be amended to entrench the fundamental principles that all children and youth capable of forming their own views be informed of important administrative decisions and judicial proceedings affecting them, and be given the opportunity to express their views about them. This would include the right to attend court or other proceedings where decisions affecting them are being made.

Original Rationale:

1. The ***UN Convention on the Rights of the Child***, Article 12 states that:

   1. *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.*
   2. *For this purpose, the child shall in particular be provided 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.*

   Although para. 70(1)(c) grants rights similar to Article 12(1), they are applicable only to children in care. It reads:

   "to be consulted and to express their views, according to their abilities, about significant decisions affecting them;"

Status:

Not implemented.

They should extend to all children receiving Ministry services.

2. The sections in the ***CF&CSA*** requiring notice to children (*e.g.* paragraphs 34(3)(a), 38(1)(a)) have three deficiencies. First, they apply only to children 12 and over. Second, they relate only to court proceedings, not administrative decisions. Third, they do not give the corollary rights of attending hearings and participating in them.

Ombudsman Observations:

The Ministry believes the ***CF&CSA,*** in its Guiding Principles and in its notice provisions, is consistent with the ***UN Convention on the Rights of the Child.***

1. **Informing and consulting** - There are numerous sections establishing the duty to inform and consult children: subsecs. 2(d), 3(a), 4(f) (all of which were drafted in light of the ***UN Convention on the Rights of the Child***), subsecs. 6(3), 70(1)(c) and 71(1) (which triggers subsec. 4(f)). These provisions should govern child protection practice, and a social worker should be prepared to explain to a court what are the child's views.

2. **Notice -** The Policy Manual, s. 3.26 states that:

   If the child has sufficient capacity, the Director meets with the child in person, to:
   - inform the child about the hearing in a manner appropriate to the child's age and capacity
   - discuss with the child the proposed plan of care
   - discuss with the child the orders available to the court and the orders the Director intends to request at the hearings, and
   - obtain the child's views.

The Ministry's current view is that these duties extend to children under 12.

I understand the Ministry is considering an amendment to s. 2 which would "add a principle that all children and youth capable of forming their own views be informed of important administrative and judicial proceedings affecting them, and have the opportunity to express their views about these events."

Ombudsman Finding and Recommendations #4 and #5:

The Ministry has not followed Gove Recommendation 75. I find that the Gove Recommendation recognizes the importance of children's rights to express their views. I am concerned, however, that two existing statutory provisions fall short of the principles of administrative fairness and those contained in Article 12 of the *UN Convention on the Rights of the Child.*

I therefore recommend that government reconsider the following enactments:

1. **Subsection 70(3) of the *CF&CSA* be repealed to ensure that para. 70(1)(c) applies to all children in the care or custody of the Ministry including those in places of confinement. This recommendation is critical to ensure that particularly vulnerable children in care who may be in places of confinement for treatment or rehabilitation have the right to be heard and to access the Ombudsman and the Advocate. There is no reason in principle to deny these children the fundamental rights in s. 70. Indeed, they, more than any other children in care, need to be able to rely on these safeguards.**

2. **All sections of the *CF&CSA* that impose an arbitrary age restriction (under 12 or 12 and over) on the duty contained in para. 70(1)(c) "to be consulted and to express their views, according to their abilities, about significant decisions that affect them," be removed, including ss. 55 through 60 of the *CF&CSA*. The right to be consulted in para. 70(1)(c) would extend to all children in receipt of services under *CF&CSA*. This is in keeping with the *UN Convention on the Rights of the Child.***

e. Cultural identity

Gove Recommendation 78: The distinction in the best interests test of the new Act between "cultural heritage" and "cultural identity" should be eliminated by repealing s. 4(2) of the Child, Family and Community Service Act.

Original Rationale:
Subsection 4(2) is unnecessary because the policy of preserving aboriginal identity is maintained under para. 4(1)(e), in which "cultural heritage" must be broader than "cultural identity." There are two other dangers in retaining subsec. 4(2). First, there is a risk that the courts might say that, since subsec. 4(2) clearly applies to aboriginals, para. 4(1)(e) should be interpreted as applying only to other ethnic groups, meaning that aboriginals would lose the advantage of the broadly described "cultural heritage." Second, subsec. 4(2) discriminates against all other ethnic groups, which cannot claim consideration of "cultural identity."

Status:
Not implemented.

Ombudsman Observations:

The Ministry's position is that the purpose of the wording of subsec. 4(2) is to give special consideration to aboriginal children.

First Nations account for 5% of BC's population, but over 30% of children in care are aboriginal and, north of Williams Lake, over 50%. The Ministry should adopt measures to reduce the disproportionate number of aboriginal children in care. Leaving subsec. 4(2) as a statutory imperative in addressing best interests of an aboriginal child likely means that aboriginal children would be placed with aboriginal families more often, but it is unlikely to reduce the number taken into care. The fact remains that the issue of aboriginal children in care is a special case, unlike that of any other ethnic group. Subsec. 4(2) seems like a legitimate provision and need not be repealed.

Ombudsman Finding:

The repeal of subsec. 4(2) does not, in my opinion, improve the best interests test contained in s. 4. In addition, subsec. 4(2) requires that the cultural identity of an aboriginal child **MUST** be considered, unlike factors in subsec. 4(1), such as cultural heritage, that **MUST** be considered but only if relevant to best interests.

Given that this statute is to be given broad and liberal interpretation, in my opinion cultural heritage in para. 4 (1)(e) is available to all children including those who are aboriginal. Subsection 4(2) simply confers an additional benefit for a group of children who are disproportionately affected by the child protection service.

In addition, the fact that subsec. 4(2) imposes a duty in the case of aboriginal children and not for children from other cultural heritages is not improperly discriminatory.

I am satisfied there should be closure on this recommendation by Judge Gove because the repeal of subsec. 4(2) will not have the effect of undercutting the appropriate legislative intent of giving aboriginal children special protection.

f. Granting routine parental consent to family caregivers

Gove Recommendation 71: *The Child, Family and Community Service Act*, s. 8, should be amended to make it clear that when a parent gives "care" of the child to a relative or friend and the ministry supports that arrangement, the caregiver should be able to give routine "parental consent" to all school and recreational activities, and to normal medical check-ups without consulting the parents.

Original Rationale:
Youth felt that their daily caregivers should have this authority, especially when the caregivers are not in daily contact with the parents. This authority should be spelled out in legislation or regulations, and not left to the vagaries of agreements.

Status:
Not implemented.

Ombudsman Observations:

The Ministry expected that s. 8 of the ***CF&CSA*** would be brought into force in the fall of 1997. Section 8 reflects the need for consent agreements between parents and those who are caring for their children. Section 8 has not been proclaimed. In the meantime, the Ministry resolves routine parental consent issues for such matters as school, recreation and most medical check-ups on a case-by-case basis by facilitating an agreement between the parties.

Paragraph 103(2)(d) provides that the Cabinet may make regulations "prescribing terms and conditions to be included in agreements made under this ***CF&CSA,***" and the Ministry intends to develop a standard form clause for all s. 8 agreements, giving caregivers these rights, if the parent consents. The Ministry wants to retain some flexibility so that parents may, for example, retain decision-making authority over such things as religious education.

Ombudsman Finding and Recommendation #6:

I find this recommendation has not been implemented. I am satisfied there should be closure on this recommendation by Judge Gove.

In keeping with my earlier recommendation regarding CIHR (see also pp. 7 - 10 of this Report), I find that s. 8 does not need to be amended, as these particulars can be included in the Regulations contemplated by para. 103(2)(d) of the *CF&CSA*. These Regulations would provide for the Consent to form part of the Agreements.

I recommend that if government proclaims s. 8 that the required Regulations be developed in accordance with this recommendation.

g. Likelihood of emotional harm

Gove Recommendation 79: The circumstances of emotional harm should be amended in s. 13(1)(e) of the *Child, Family and Community Service Act* to include "likely to be" harmed by the parent's conduct.

Original Rationale:
If "likely to be" emotionally harmed was included, then a judge could review the parent's course of conduct that would likely produce one of the symptoms in subsec. 13(2). Good training, supervision and case management will prevent misuse of this power.

Status:
Not implemented.

Ombudsman Observations:

The Ministry has indicated it will consider this recommendation following further experience with the ***CF&CSA*** and the courts.

In the Ministry's view it can presently act under para. 13(1)(h) when there is a course of conduct by a parent that may lead to emotional harm as defined in subsec. 13(2), which reads:

13 (1) *A child needs protection in the following circumstances:*
(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care.

The Ministry studied the legislation across Canada, and ultimately chose to follow Ontario and Nova Scotia, rather than Alberta or Saskatchewan. No other province appears to cover the likelihood of emotional harm, and there is little helpful literature on predicting such a likelihood.

Ombudsman Findings:

My concerns with the proposed change to para. 13(1)(e) to include "likely to be harmed by the parent's conduct" are:

1. It would result in a monumental change in the current test of when protection is needed. That is, the test would move from a test of emotional harm based on demonstrated **SEVERE** anxiety, depression, withdrawal or self-destructive or

aggressive behaviour to a nebulous test of the likelihood of those conditions occurring sometime in the future; and

2. Government is responsible to inform families under what conditions it will intervene. Adding the likelihood of emotional harm would enable government to intervene without informing families in advance and without certainty of when such intervention could be anticipated. In the case of measuring future emotional harm, the predictors are much more imprecise than for other types of harm under the ***CF&CSA***.

I find, therefore, the decision not to implement to date has been reasonable. For my purpose, I am satisfied that there can be closure on this Recommendation by Judge Gove.

h. Initial investigation

Gove Recommendation 80: Section 16 of the Child, Family and Community Service Act should require an initial investigation of the child's need for protection in response to an initial report; after investigating an initial report, a director may decide to take one of the actions in s. 16(2), including conducting a further investigation.

Original Rationale:
Subsection 16(1) requires only that the Director assess the information, whereas under the previous legislation there was a requirement for an investigation. There is a danger that an "assessment" under subsec. 16(1) will be based on incomplete or inaccurate information.

Status:
Not implemented.

Ombudsman Observations:

The Ministry believes that this concern is addressed by the ***CF&CSA*** and in practice. Current assessments under subsec. 16(1) include a review of previous reports.

The Ministry receives about 32,000 reports each year. The Director or his or her delegate under the statute will assess all of these and will investigate about 22,000 of those, as a result of which it is determined that about 6,200 children are in need of protection. The Ministry's Risk Assessment Process screens out those reports that are not found to be child protection matters. Under subsec. 16(1), the Director must "assess the information" in the report. Policy 3.4 obligates the Director to confirm the basis for the reporter's belief, confirm the child's current circumstances and confirm the names of collaterals. The Director must then outline to the reporter the steps in the assessment and investigation. Finally, the Director must review the information provided by the reporter, "review other information obtained under the ***Act*** about the child," may speak with the parent and, with the parent's consent, may speak with the child, other children and anyone else who is able to assist.

The policy states that the Director must commence an investigation after the initial assessment under para. 16(2)(c) where "the Director has ***any*** doubts about the child's safety and well-being, the child's need for protection or the ability and willingness of the child's parent to care for and protect the child."

Ministry policy sets an impressively low threshold for deciding when an investigation must be done: "where the Director has ***any*** doubts about the child's safety and well-being, the child's need for protection or the ability and willingness of the child's

parent to care for and protect the child." Consequently, the issue here is how thorough an examination must be undertaken in response to a report, to decide whether or not an investigation is necessary. The obligation to "review other information obtained under the ***Act*** about the child, the child's family or anyone else identified in the report" appears to address Judge Gove's concern about not reviewing previous child protection reports. I was initially concerned that giving a social worker the discretion as to whether to speak with the parent, and giving the parent a veto over speaking with the child, other children and anyone else, placed too much reliance on sound professional judgment. But since an investigation must be initiated whenever the social worker on behalf of the Director has "***any*** doubts" about the child's safety and well-being, it is, in my opinion, an adequate safeguard.

Ombudsman Finding:

As risk assessment is an absolute requirement under the child protection model that is now in place, the Ministry must have the ability to screen what is and what is not a child protection matter. After the initial assessment the policy test of "***any*** doubt about the child's safety and well-being" (emphasis added) is an impressively low threshold and clear standard to trigger an investigation. This test is consistent with the provision contained in s. 2 of the ***CF&CSA*** giving paramountcy to safety and well-being. I am satisfied there should be closure on this recommendation.

i. Reporting the results of an investigation

Gove Recommendation 81: The director, under s. 16(3) of the Child, Family and Community Service Act should be required to make all reasonable efforts to report the results of all initial and subsequent investigations under s. 16(1) and s. 16(2) to the parent, the person who reported and other agencies, persons or community bodies that are involved with the child and family.

Original Rationale:
All caregivers and collaterals need to know the outcome of subsec. 16(1) assessments and para. 16(2)(c) investigations. Although this kind of report must be balanced with the child's and family's right to confidentiality, the greater interest of the child's safety will be served by collateral agencies being informed.

Status:
Fully implemented.

Ombudsman Observations:

This recommendation has been partially implemented by the 1997 amendments, through the addition of para. 16(3)(c) of the ***CF&CSA***. That paragraph of the ***CF&CSA*** states that the Director must make all reasonable efforts to report the result of the investigation under para. 16(2)(c) to "any other person or community agency if the Director determines this is necessary to ensure the child's safety or well-being." The Ministry is opposed to reporting the result of a subsec. 16(1) assessment that does not lead to a para. 16(2)(c) investigation, because such an assessment (by definition) results in a finding that the child is safe, well and not in need of protection. It would be an unreasonable invasion of privacy to disclose in such circumstances where the assessment has revealed that the child is safe and well.

Ombudsman Finding:

I agree with the Ministry that when a report is filed under the ***CF&CSA*** and an assessment is done by the Director, the person filing is not entitled to a report of the result from the Director.

However, I urge the Ministry to instruct its intake staff that whenever a report is received pursuant to s. 16 of the ***CF&CSA*** all persons filing a report about a child will be given notice and informed at the time of reporting that if, after assessment, there is no investigation they will not hear back from the Ministry. Intake should invite reporters to call back if they have any concerns. If complaints are received by

intake and cannot be resolved, the person complaining should be referred to the Complaints Resolution Process. All those persons who report where an investigation is undertaken, will receive a report unless to do so would "cause physical and emotional harm to any person or endanger the child's safety."

j. Threshold belief before obtaining an order for access

Gove Recommendation 83: Section 17(1) of the Child, Family and Community Service Act should be redrafted to eliminate the threshold belief that a director must form before obtaining an order for access to an endangered child.

Original Rationale:
It is unlikely that the Director will have reasonable grounds to believe that a child needs protection, if access is necessary in order to determine whether the child needs protection. There should be only three requirements in order to apply under this section: the Director has received a protection report; the person refuses access; and the Director requires access in order to investigate the protection report.

Status:
Not implemented.

Ombudsman Observations:

The Ministry's position is that the best interests of the child and the integrity of the family are addressed through the current wording of the ***CF&CSA***.

Thirty percent of all reports lead to a determination that the child is in need of protection. For the Director to be entitled to an order under this section merely on the basis of having received a report would be unwarranted. Based on present wording, either the report itself or the Director's assessment of the information in the report may provide him or her "reasonable grounds." Alternatively, applications under s. 17 of the ***CF&CSA*** are done *ex parte*. I am satisfied that the safeguard is that the court will test for whether the Director has reasonable grounds in granting the order. The statutory threshold has not been a problem in practice for the Ministry.

Ombudsman Finding:

I am satisfied that there should be closure on this recommendation.

k. Family conferences

Gove Recommendation 85: Section 20 of the Child, Family and Community Service Act, which provides for family conferences, should not be proclaimed into law until the ministry has more experience with family conferences. If s. 20 is proclaimed, it should be amended prior to proclamation so that families in which children are at risk of abuse or neglect are not referred to a family conference. It should be amended so that the use of a family conference is discretionary, and so that a director "may" offer to refer a parent to a family conference.

Original Rationale:
Section 20 should not be proclaimed until the Ministry has more experience with family conferences. If implemented, family conferences should not be used where the child is at risk of abuse or neglect, and the Director should have discretion when to use them, the test being where the Director believes that the child's safety has been ensured and the child and family could benefit from family support services or other child welfare services.

Status:
Fully implemented.

Ombudsman Observations:

I understand that s. 20 of the ***CF&CSA*** allowing for family conferences will be proclaimed in force in the spring of 1998, following which pilots will be run.

Family conferences have been used in New Zealand for all types of child protection cases, with the result that the number of children in care has dropped from 7,000 to 2,500. One of the reasons for developing family conferences in BC was to overcome court delays, and case conferences provided for in the Rules of Court (Rule 2) are a variation. The ideal situation is to have a variety of options available, including family conferences and case conferences. The family conference model is based on the assumption that the independent coordinator will ensure that the interests of all parties, especially the child's, are adequately represented.

Subsection 20(2) has been amended (1997, s. 28) to give the Director discretion not to refer a family to a family conference coordinator. Criteria regarding which families will receive family conference services will be based on the results of the pilot studies.

Recommendation 85 has been followed because s. 20 was not proclaimed, the pilot projects to test the value of family conferences are imminent, and subsection 20(2) has been amended to give the Director the discretion not to refer. I urge government to give special consideration to the value of family conferences to the aboriginal communities during the pilot projects.

(Also see p. 101 of this Report below regarding Practice issues, (g) Family group conferences.)

1. Criteria for referring case to a family conference

Gove Recommendation 86: If family conferences (s. 20 of the *Child, Family and Community Service Act*) are to be proclaimed into law, the time limits [in s. 21] should be removed, and the criteria for the decision for referral to a family conference should be that it is made where a director believes that the child's safety has been ensured and that the family could benefit from family support services or other child welfare services.

Original Rationale:
The 6 month/18 month time limits in s. 21 should be removed, because they are unenforceable. Some plans may require more than 18 months, and the matter should be left to policy.

Status:
Not implemented.

Ombudsman Observations:

Time limits are important, as they give a time frame within which decisions will be made and outcomes evaluated. If a plan of care developed at a family conference has not worked within 18 months, the Ministry needs to reassess the situation to ensure the plan still meets the needs of that child, if only because of the passage of time and a possible change in circumstance.

Ombudsman Finding:

I find that the Ministry has not implemented this recommendation. Particularly from an Ombudsman's perspective, the imposition of time limits addresses the need for decisions to be made in a timely fashion in order to ensure fairness for the child. I am satisfied that there should be closure on this recommendation by Gove and that the time limits should not be removed.

m. Filing of Director's report in court

Gove Recommendation 91: In order to provide legitimacy to a court review of a director's decisions, either the filing of directors' reports should be removed from s. 23, s. 33(3) and s. 48, or the courts should be given power to question the withdrawal of a case for protection by a director and to require a case to be presented for hearing if the court detects a serious preliminary concern for the child's safety.

Original Rationale:
There is no purpose in filing a Director's report with the court, if the court has no jurisdiction to question the Director's decision. Either the filing requirement should be withdrawn or the court should be given the power to question the withdrawal of the case, and require a case to be presented for hearing.

Status:
Not implemented.

Ombudsman Observations:

The Ministry advises that it will continue to provide reports to the courts and that the Ministry will work with the Ministry of the Attorney General to assess the implications of acting on this recommendation.

The Director is required to prepare a report when a case is withdrawn, explaining the reasons for the withdrawal, and must give the parent a copy. Requiring the Director to file a copy with the court "brings closure" to the matter, establishes what has happened and ensures that the report will be part of the court record if child protection proceedings are subsequently reactivated.

Ombudsman Finding and Recommendation #7:

I find that this recommendation has not been implemented.

I recommend that the Ministry as part of its ongoing work with the Ministry of the Attorney General reconfirm its commitment to have a statutory obligation for the Director to file reports and for the court to have the discretion to question the Director on his or her report as part of the proceedings at the time of withdrawal.

n. Summons instead of removal

Gove Recommendation 72: The Child, Family and Community Service Act should be amended to give a director the discretion to bring a child protection case to court by summons instead of by removing the child.

Original Rationale:
In some cases the Director wants a protection order only in order to impose supervision within the family home. It would be counterproductive to physically remove the child under s. 30, and then return the child after a presentation hearing.

Status:
Fully implemented.

Ombudsman Observations:

Section 29.1, of the ***CF&CSA***, included in the 1997 amendments, achieves the intention of the Gove Recommendation, but limits its application to cases where the Director wants only a supervision order. Section 29.1 reads:

> *A director may apply to the court for an order that the director supervise a child's care if the director has reasonable grounds to believe that*
> *a) the child needs protection, and*
> *b) a supervision order would be adequate to protect the child.*

The Ministry did not want to give a general summons power, because it would be contradictory for the Director to make a finding that a child was in need of protection and then leave her or him in the home pending the presentation hearing. However, removing a child from the home may be unnecessary and contrary to the child's well-being when the Director simply wants a supervision order.

o. Third party applications for removal

Gove Recommendation 82: A new section should be added to the Child, Family and Community Service Act that permits third-party applications for removal of a child under s. 30.

Original Rationale:
If the Director does not remove a child, despite numerous reports that a child is in need of protection, it should be open to third parties to initiate a child protection proceeding, subject to a judge granting permission. Some other jurisdictions, such as Ontario, provide for such a procedure.

Status:
Not implemented.

Ombudsman Observations:

The Ministry advises that it is reviewing the recommendation to permit third-party applications for removal of a child under s. 30 of the ***CF&CSA***. There are concerns with this recommendation for several reasons. First, there are other mechanisms in place to ensure that a Director acts competently, including the internal and external review procedures authorized under subsec. 93(3). Second, there would be significant procedural problems with such a practice: what evidence would the judge rely on, would the Director be required to assume conduct of the presentation hearing, if one was ordered?

Ombudsman Finding and Recommendation #8:

I find the recommendation has not been implemented.

I recommend that the Ministry, as part of its review regarding third-party applications, assess the adequacy of all internal and external review procedures that now exist, which were not in place at the time of the Gove Inquiry, to ascertain their effectiveness, prior to deciding whether or not to enact this amendment.

p. Returning the child home pending a presentation hearing

Gove Recommendation 73: The Child, Family and Community Service Act, s. 32, should be amended to make it clear that a director can, in limited circumstances, retain control of the care of a child, while leaving the child in the home of a parent, even though a director has proceeded under s. 30 (by "removal" of a child).

Original Rationale:
The Director needs the authority to "remove" a child and then return the child physically to the family home pending the presentation hearing, during which time the Director has the "care" of the child. Subsection 32(1) as currently drafted does not permit this.

Status:
Fully implemented.

Ombudsman Observations:

The decision to remove a child is based on an assessment of risk developed through utilizing the Risk Assessment Model. Where an assessment of risk indicates that a child is in need of protection and cannot be protected within the family, the child is removed. The child may be returned to the family at judicial discretion on completion of a presentation hearing that takes place within seven days of a child's removal.

If the Director has decided that removal is necessary, it would be bad practice to then place the child back in the family home pending the presentation hearing. The only circumstance in which leaving the child in the family home would be appropriate is where the Director is seeking only a supervision order. This is now provided for in s. 29.1, which was enacted by the 1997 amendments.

I find that the goal of the Recommendation by Judge Gove to leave a child in her or his home subject to the Director's supervision is fully met by s. 29.1. This section enables the court to grant a supervision order, without the parent's consent, to the Director. In all other circumstances, any decision about returning the child home would be made by the court at the presentation hearing.

q. Canvassing aboriginal ancestry early in the proceedings

> Gove Recommendation 77(b): In order to achieve the early and timely determination of certainty about aboriginal ancestry for purposes of notice, the Inquiry recommends two amendments to the *Child, Family and Community Service Act*: . . .
> b. Require the court to canvass the issue at early proceedings (e.g., a presentation hearing) and make a determination where warranted that the parent or child is of "aboriginal ancestry."

Original Rationale:
The court should address this issue early in the proceedings. If it arises for the first time late in the proceedings, it could result in delays harmful to the child's best interests.

Status:
Not implemented.

Ombudsman Observations:

The Ministry takes the position that this issue is addressed in current legislation and practice. Social workers have a duty to make inquiries to determine if a child is aboriginal, in accordance with the definition in the ***CF&CSA***, in which case special notice provisions and best interests considerations come into play. This is an important requirement and ought not to be displaced by any change in court proceedings.

Ombudsman Finding and Recommendation #9:

I find that the recommendation has not been implemented.

I recommend that the Ministry work with the Ministry of the Attorney General, in order to assist the court, to pursue how the early determination of aboriginal ancestry by the court can be achieved.

r. Six month temporary custody order for children under five years of age

Gove Recommendation 70: Section 43 of the Child, Family and Community Service Act should be amended to permit an initial temporary-care order for children under five years of age to last for up to six months.

Original Rationale:
Many social workers requested this amendment on the basis that it is more realistic, allowing parents to focus on intensive effort at developing parenting skills. If a particular case warrants a shorter term, the court may so order.

Status:
Not implemented.

Ombudsman Observations:

The Ministry's response was that this recommendation was partially implemented in 1996, when subsec. 45(1.1) was added, but this permits the court to extend the ***total*** period of temporary custody, not the initial temporary custody order under subsec. 43(a). This amendment was made before Judge Gove reported, and he was critical of it because he believed it could delay permanency planning.

Having regard to a child's sense of time, the Ministry does not believe that a young child should be in care for more than three months without an order. I agree. All the research says that the longer a child is separated from a parent, the less likely it is that the child will go home. The Task Force on Safeguards for Children and Youth in Foster or Group Home Care supported this approach, when stating that the Ministry should "ensure that time limits for temporary custody orders and the total period of temporary custody as prescribed in the legislation are adhered to."

In reality, a child who has been removed is often out of the home for up to nine months before the temporary custody order is made, so there is, in practice, ample time to address the parents' needs.

Ombudsman Finding:

I find the recommendation has not been implemented. The real problem here is delay in getting matters heard by the court. I am satisfied that there should be closure on this Gove Recommendation because to extend from three to six months may delay permanency planning, which was the very situation Gove's Recommendation sought to prevent. In addition, no legislative amendment should

be considered that could be interpreted by the courts as indicating an intention on the part of the Legislature to allow for greater delay in relation to children under five years of age.

s. Enforcement of Director's guardianship rights

Gove Recommendation 87: A new section should be added to the Child, Family and Community Service Act in order to permit a director to enforce custody and guardianship rights where a contracted caregiver or foster parent is refusing to relinquish a child who is in care.

Original Rationale:
Subsection 16(2) of the former ***Family and Child Service Act*** gave the Superintendent the authority to apply to the court for an order empowering a police officer to enforce the Superintendent's custody.

Status:
Not implemented.

Ombudsman Observations:

Under the ***CF&CSA***, the Director currently has the power to enforce custody and guardianship rights where a contracted caregiver or foster parent is refusing to relinquish a child who is in care. The Director has authority under the ***CF&CSA*** to take guardianship custody of a child. It is the intent of the Ministry to develop written foster care agreements, which will specify for caregivers and foster parents the Director's authority to remove a child.

Ombudsman Finding and Recommendation #10:

I find the recommendation has not been implemented.

I recommend that the Ministry develop foster care agreements as proposed, in consultation with the BC Federation of Foster Parents, which agreements specify the Director's authority to remove. I am satisfied that the recommendation of Gove would be met in principle if this were done.

t. Continuing custody order application time limits

Gove Recommendation 89: The 30-day limits on when a director can start an application for a continuing-custody order should be deleted from s. 49(1) and s. 49(9) of the Child, Family and Community Service Act or replaced with longer limits of at least 60 days.

Original Rationale:
There is a problem of procedural gap where a temporary order could lapse before the Director is able to proceed with permanency planning. This meant a child's interest could be compromised because of a technicality.

Status:
Fully implemented.

Ombudsman Observations:

This recommendation has been fully implemented by the 1997 amendments to subsections 49(1) and (9) of the ***CF&CSA*** that read:

> ***49(1)****Not sooner than 30 days before a temporary custody order expires, the director may apply to the court for a continuing custody order....*
>
> ***(9)****Not sooner than 30 days before a temporary custody order under subsection (7)(b) expires, the director may apply to the court for a continuing custody order.*

u. Child's rights to notice, consultation and to apply for access

Gove Recommendation 74: The Child, Family and Community Service Act, s. 56, should be amended to include notice and consultation rights for any child capable of forming views, and to permit an access application by a child to a parent or former foster parent.

Original Rationale:
Section 56 arbitrarily limits notice of access applications to children 12 years of age and older, whereas the ***UN Convention on the Rights of the Child*** states that a child should be involved and consulted if she or he is capable of forming his or her own views.

Children should be allowed to apply for access. Although Ministry policy is to promote continuity and to support ties of affection (subsections 4(c) and (d)), the Inquiry heard stories that social workers sometimes block or frustrate attempts by children to have access to former foster parents.

Status:
Committed; work in progress.

Ombudsman Observations:

The Ministry indicates that in its opinion the ***CF&CSA*** reflects the concern in its statutory Guiding Principles for notice and consultation rights for any child capable of forming views. With respect to permitting an access application by a child to a parent or former foster parent, the Ministry has indicated that it will consider a future legislative amendment.

A proposal is being considered by the Ministry, to allow a child who is 12 years of age and is in the Director's continuing custody, to make applications for access orders to gain the right of access to family, friends and others.

Currently, the Ministry policy requires social workers to inform children under 12 years of age of all court proceedings affecting them, including s. 56 proceedings. The proposal to amend s. 2 would instruct current policy in this regard and would also be of relevance for staff when consulting with children on access-related issues.

Ombudsman Finding and Recommendation #11:

My recommendations in this Report (see pp. 20 - 22) address the need identified in this Gove Recommendation, except with respect to a child seeking access to a parent or former foster parent.

In that regard, I recommend that the Ministry explore informal ways to enable children in care, on their own request, to have access to any person, and that policy guidelines be developed to assist social workers to determine how these requests should be considered. Only when the child is refused or there is a perceived problem should a child be forced to make a formal access application under s. 56 of the *CF&CSA*, as amended, consistent with that part of the Gove Recommendation that remains outstanding.

v. 72 hours' notice to foster parents

Gove Recommendation 88: A new section should be added to the Child, Family and Community Service Act that provides that caregivers, including foster parents who have had custody of the child for six months or longer, should receive a minimum of 72 hours' notice before the custody of the child is transferred to another caregiver.

Original Rationale:
A caregiver should have sufficient time to ask for a review of any decision to transfer a child to another caregiver.

Status:
Committed; work in principle.

Ombudsman Observations:

The Ministry is considering this recommendation, but currently manages notice to caregivers by policy or agreement. The Ministry is concerned that granting these new rights to caregivers may limit the Director of Child Protection's ability to move children in care.

The Ministry is considering adding a provision "that requires the Director to provide foster parents and caregivers who have provided care to a child for six months to receive notification at least 72 hours before the child in their care is moved to another caregiver. . . . Any amendment would need to reserve the Director's right to remove a child without notification to the caregiver if prior notification would place the child's safety or well-being at risk."

Ombudsman Finding and Recommendations #12 and 13:

I find that the best interests of the child and the statutory duty imposed by s. 2 regarding well-being and safety can only be met if no other interest is paramount. It is important to respect and honour the work of foster parents and other caregivers.

I recommend in the short term that the Director give 72 hours' notice as a matter of practice whenever feasible, out of respect for the caregiver and as a matter of fair administrative process.

I recommend in the long term that a statutory provision for 72 hours' notice be considered but only if the provision is clearly and unequivocally subject to s. 2 of the *CF&CSA*. I further recommend that the notice provisions be included in the guardianship standards of practice being developed by the Director.

w. Appeals directly to the BC Court of Appeal

Gove Recommendation 76: The Child, Family and Community Service Act, s. 81(1), should be amended to direct appeals of Provincial Court decisions directly to the Court of Appeal of British Columbia.

Original Rationale:
Appeals to the BC Supreme Court inevitably result in *de novo* hearings. This should be prevented because it causes delay, and it is unnecessary now that all provincial court judges are legally trained.

Status:
Not implemented.

Ombudsman Observations:

The Ministry believes that the safety and well-being of children are better served through its current appeal procedures when appeals from the Provincial Court proceed to the Supreme Court.

The BC Supreme Court can decide whether it will conduct a trial *de novo,* allow fresh evidence, or limit the appeal to questions of law. What is important is that the court will be guided by its special *parens patriae* power (inherent jurisdiction) for children and other vulnerable people. The capacity to have a trial *de novo* is so important for children because of possible change in circumstances. The court can and should use this power to ensure that those individuals in our society who are most vulnerable, such as children, are properly protected. The court will exercise its discretion in the best interests of, and for the benefit of, the child.

I believe that an appeal to the BC Supreme Court would be preferable to an appeal to the Court of Appeal, as it is faster, more accessible (especially outside Victoria and Vancouver), and it preserves and acknowledges the inherent *parens patriae* jurisdiction with respect to children.

Ombudsman Finding:

I find the recommendation has not been implemented. I am satisfied that there should be closure on this recommendation of Gove.

x. Do not proclaim the Child and Family Review Board yet

Gove Recommendation 90: The Child, Family and Community Service Act, s. 83, which establishes the Child and Family Review board, should not be proclaimed until the government has considered this report's recommendations for the Child Welfare Review Board, and has strengthened complaint and appeal mechanisms for child welfare service decisions.

Original Rationale:
Judge Gove was concerned about the restricted jurisdiction of the Child and Family Review Board. By statute it was limited to reviewing breaches of rights of children in care and other matters referred by the Minister. This review board would not have helped Matthew. The Inquiry found that there ought to be a review or appeal mechanism regarding all child welfare services.

Status:
Fully implemented.

Ombudsman Observations:

The ***Children's Commission Act*** establishes the Tribunal Division of the Children's Commission, which has the broadened mandate as recommended. This removes the need to consider a delayed proclamation regarding the Child and Family Review Board. (See p. 73 and p. 123 of this Report regarding complaint and appeal mechanisms).

y. Court order to produce information to the Director

Gove Recommendation 84: Either s. 17 (sic) or s. 65 of the Child, Family and Community Service Act should be amended to permit a director to seek a court order to produce information necessary for a director's investigation.

Original Rationale:
Under s. 96, the Director has the right to "any information" from a public body, but that would not extend to records held by private bodies or individuals (*e.g.* a physician), and in any event there is no power to force disclosure, such as by a court order, and failure to produce is not an offence under s. 102.

Under s. 65, the Director may apply during a hearing for an order that a person produce a "record," but "record" is narrowly defined and this provision does not help a social worker during an investigation.

Status:
Not implemented.

Ombudsman Observations:

The Ministry takes the position that current legislation addresses this concern and no amendment is required.

In re B.D. (unreported) March 13, 1996 (BC Prov. Ct.), Parksville Reg. No. F948, Lazar, P.C.J. stated that "an order can be made under section 65, at the time of an initial investigation into a child protection complaint and at any time when the child's need for protection is a factor in a determination which must be made by either the Director or the courts."

The court decision seems to answer Judge Gove's concerns about s. 65, and I am of the opinion that the Director can get everything she or he needs (*i.e.* records) under this provision.

Ombudsman Finding and Recommendation #14:

I find that the recommendation has not been implemented. Given that the provincial court decision *In re B.D.* addresses the concerns regarding s. 65, I am satisfied that this aspect of Recommendation 84 has been achieved.

I recommend with respect to s. 96, that it be reviewed by the Ministry to determine if the section permits the Director access to records held by private bodies.

z. Access to GAIN program information

Gove Recommendation 24: The *Guaranteed Available Income for Need Act* and Regulations should be amended to give child protection social workers access to all information from the GAIN program necessary to ensure the safety and well-being of a child.

Original Rationale:
The interpretation of several sections of the ***GAIN Act*** (now ***BC Benefits Act***) has led to uncertainty among financial assistance workers as to what information about a client may be shared with child protection social workers, and the latter are often reluctant to seek access to information about clients contained in the Ministry's ***GAIN Act*** files, even when the welfare of a child is at stake. Some employees who do share information across program areas feel they are breaking the rules, and others have been threatened with disciplinary action. Although various amendments to the ***GAIN Act*** have been discussed, workers remain confused.

Status:
Fully implemented.

Ombudsman Observations:

Subsection 96(1) of the ***CF&CSA*** provides that:

(1) *A Director has the right to any information that*
- *(a) is in the custody or control of a public body as defined in the* ***Freedom of Information and Protection of Privacy Act,*** *and*
- **(b)** *is necessary to enable the Director to exercise his or her powers or perform the duties or functions under this* ***Act.***

While the ***GAIN Act*** has been replaced by ***BC Benefits Act***, subsec. 96(1) of ***CF&CSA*** still fully rectifies the problem identified by the Gove Recommendation.

4. Guardianship

a. Province-wide policies

Gove Recommendation 109: The Ministry for Children and Youth should retain responsibility for setting province-wide policies respecting guardianship.

Original Rationale:
The Director's guardianship responsibility to make parental decisions ranges from routine matters such as curfew and sports activities to controversial issues such as having an abortion, accepting a blood transfusion or the termination of life supports. If guardianship responsibilities are devolved to regional child welfare boards and children's centres, it is important that there be consistent province-wide policy respecting guardianship issues, and thus responsibility for setting guardianship policy should remain at the provincial level.

Status:
Fully implemented.

Ombudsman Observations:

At present, the Director of Child Protection has retained this responsibility, which is in fact delegated to and exercised by the Manager of Guardianship Policy and Standards.

If in the future the Director considers involving staff in each region in a guardianship role, she or he needs to remain cognizant of the importance of the role of the Director in ensuring compliance with provincial standards.

5. Qualifications

a. Child Protection Social Workers

Gove Recommendation 55: Ministry social workers who provide direct services to children and their families should, at a minimum, be required to have a Bachelor of Social Work degree as a basic qualification. A Master of Social Work degree should continue to be preferred.

Gove Recommendation 56: In order to move to the Bachelor of Social Work qualification as a standard, the ministry, in consultation with schools of social work, unions and the Ministry of Skills, Labour and Training, should:

a. require all future candidates for social work positions to have, at a minimum, a Bachelor of Social Work degree,
b. provide strong incentives for existing workers to obtain BSWs through reasonable access to a concentrated conversion program for those with a Bachelor of Arts degree,
c. promote access, through distance education, to Bachelor of Social Work programs in remote communities,
d. provide the opportunity for part-time study to achieve a Bachelor of Social Work degree,
e. review the qualification upgrade incentives available to school teachers with a view to implementing a similar program for child welfare social workers, and
f. provide professional development opportunities for experienced and senior social workers to acquire the needed qualifications.

Gove Recommendation 116: The Ministry of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following:

a. require that all applicants for Ministry social work positions have at least a Bachelor of Social Work degree.

Original Rationale:

The Inquiry found that only slightly over 50% of Ministry social workers had BSW or MSW qualifications, and that intake workers lacked the basic knowledge and skills necessary to respond to and investigate reports, and to complete risk assessments in cases of child abuse and neglect. A BSW provides graduates with knowledge, skills and attitudes that are essential for child welfare work. The Inquiry

Status:

Committed; work in progress.

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concluded that the Ministry's KSA testing program may be an important hiring tool, but is an inadequate substitute for academic training in social work.

Ombudsman Observations:

Postings for vacant social worker positions after November 29, 1995 established a Bachelor of Social Work as a requirement for application. Eligibility lists in place on that date were reviewed. Those successful applicants on the list who did not have a BSW and who had not received a job offer were removed from the eligibility list. This policy applied to all Ministry social workers, including SPMH. Between December 1995 and September 1996 the Ministry hired 360 social workers, all of whom had at least a BSW; 325 were for child protection positions. Between January and November 1997 the Ministry hired an additional 87 child protection workers; 19 as regular employees and 68 as auxiliaries.

According to the Ministry, the annual turnover rate for child protection social workers (SPO series) is about 6%, and this has been consistent over the past few years. It may have been as high as 8% last year, because about 20 social workers took advantage of an early retirement incentive package. The 6% figure includes social workers who are promoted to a supervisor position, or who transfer to another Ministry, such as Health.

A 10-month concentrated BSW program for existing Ministry social workers was created by the University of Victoria School of Social Work between January and October 1997, specifically in response to Gove Recommendation 56. The Ministry of Education, Skills and Training funded the development costs for the 130 spaces. Eighty-three seats were for Ministry employees (paid for by the Ministry) and the remaining 47 were for community agencies (which paid their own way). Eighty-one Ministry employees are graduating.

The cost to the Ministry was approximately $75,000 for each Ministry employee who took the program: about $25,000 for mounting the program and about $50,000 for a backfill worker. The salary cost for the employee did not need to be factored in as it would have been paid in any event. The $75,000 reflects the actual new costs. There are still at least 300 Ministry social workers without a BSW, but the Ministry considers the concentrated BSW too expensive, and has put the program on hold. Instead, it has decided to assess each non-BSW employee's competencies and develop a learning experience that will give them the equivalent of a BSW and the 20-week new employee training program.

Ombudsman Findings and Recommendation #15:

I find that Gove Recommendation 116(a) was fully and promptly implemented.

Judge Gove's Recommendations 55 and 56 are being considered by the Ministry as a work in progress. As a result of this investigation, I make the following observations.

While Judge Gove focused primarily on appropriate qualifications for child protection social workers, the landscape has changed with the creation of the new Ministry, which has brought together staff from numerous professional disciplines. In the two years since Judge Gove reported, there has been considerable professional discussion of the essential competencies required for working with children and their families and there is today, because of the Ministry's experience, a greater understanding of the diversity of training and skills that the Ministry may draw upon.

The Ministry's ultimate responsibility is to ensure that staff and contract sector employees working with children and their families are competent to perform the tasks expected of them. There are, in my view, three elements to competency: academic qualifications, new employee training and entry-level testing.

I agree that all social workers should have a BSW or MSW degree in order to use the title and should be registered with a self-regulating body of social workers. I do not believe, however, that all child protection workers need to be social workers. All child protection workers must have a degree in social work (as recommended by Judge Gove) or an equivalent degree that must also be a condition of membership in the appropriate self-regulating professional body.

Most important, all child protection workers who have a social work or equivalent degree must be able to demonstrate competence (through a KSA - Knowledge, Skills and Abilities - process) at the time of hiring, after the 20-week orientation training program, and prior to being granted a delegation in child protection work. This testing for competence is particularly important, given that child protection courses are not yet mandatory for a degree in social work.

I recommend, therefore, that the Ministry continue its efforts to professionalize child protection work but place demonstrated

competence as the number one, but not the only essential, consideration. Competence in caring for children's safety and well-being is dependent on a combination of an appropriate professional degree, proper training and adequate testing for competence.

b. Contract sector service providers

Gove Recommendation 58: The Ministry, in consultation with the Federation of Child and Family Services of British Columbia, other child-serving ministries and relevant education and training institutions, should define province-wide standards governing the qualifications of child welfare contract service professions. This initiative should include defining common language to classify discrete groups of contract workers - for example, "special service workers," "family support workers," "street youth workers" and "re-connect workers" should all be classified as "child and youth care workers" with defined entry-level qualifications.

Original Rationale:
It is important that there be consistent pre-employment qualifications for people working directly with abused and neglected children before they are recruited and trained to work in an agency or organization. The Inquiry was told that the current tendering process for contracts inhibits attracting and retaining staff with the necessary qualifications.

Status:
Committed; work in progress.

Ombudsman Observations:

Two Ministry initiatives are currently underway:

1. **Program and Contract Restructuring Project**: When the new Ministry was created, it was discovered that there were 5,618 contracts worth $800 million, with 2,297 community agencies (exclusive of foster and adoption homes, and associate families). The Ministry determined that it was impossible to manage and control this many agencies and contracts, and that there were duplication and overlap. The Korbin Commission had reached a similar conclusion in its Report.

   The Restructuring Project undertaken by the Ministry is an attempt to rationalize the delivery of contracted services through consolidation, with the objective of reducing overlap, strengthening weak areas (*e.g.* aboriginal services), bringing services closer to communities and ensuring value for money.

   Each ROO has a regional contract manager responsible for restructuring within that region, with the COA providing legal, purchasing and contract writing

supports. The goal is to reduce the number of agencies from 2,297 to 987, and the number of contracts from 5,618 to 1,487.

The Ministry is using a tendering process and has set a deadline of April 1, 1998. By that time it wants to have all the contractors identified, although it may take some additional time to work through the legal and labour relations issues.

Once the restructuring process is complete, the Ministry will be in a position to proceed with developing training programs for the contract sector, based on the various job classifications involved and the current level of competencies. I anticipate that the Ministry will assume financial responsibility for contract sector training, either directly or as part of its funding of specific agencies.

2. **Accreditation**: In October 1997, the Ministry released a discussion paper entitled "Accreditation as a Mechanism for Quality Assurance and Quality Improvement." The Ministry plans to retain a third party accreditor to assess quality assurance for all contracted services with total annual contracts with the Ministry of at least $350,000. If and when this program commences, the accreditation process would include determining the competencies required for specific job functions.

Ombudsman Finding and Recommendation #16:

The Ministry is committed to these recommendations. Some work has begun on contract restructuring that may result in the Ministry being able to fully address these recommendations.

I recommend that the Ministry undertake a consultation with the Federation of Child and Family Services of BC, as proposed by Gove, without restrictions, focusing on the challenge of how to ensure professional standards for those working with children and youth in the contract sector. (See p. 106 of this Report.)

Separate and apart from this Report, my Office is in the process of receiving complaints about whether the tendering process coming out of the contract restructuring process has been fair. As this relates to matters beyond the goal of this Report, any investigation report that results will be released separately.

6. Training

a. Social Workers

i. 20-week new employee training program

> Gove Recommendation 59: The ministry should fast-track the development of a comprehensive, 20-week new employee Training Program for child protection social workers, including Family and Children's Services and SPMH social workers who work with children.
> ...

> Gove Recommendation 116: The Ministry of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following:
> (b) require that all new child protection social work employees receive a comprehensive 20-week training program before taking on caseloads.

Original Rationale:
The Inquiry found that there was overwhelming consensus within the Ministry that the Ministry's two-week Core Training program and six weeks of self-study under supervision were inadequate. The Core training program did not test for required skills, was inadequate in many areas such as risk assessment, and many graduates did not feel competent. Judge Gove was deeply concerned that MSS had talked for two years about developing a three-month program, but nothing was realized.

Status:
Fully implemented.

Ombudsman Observations:

The former Ministry of Social Services developed the 20-week training program in response to the Gove Inquiry recommendations, and 99 new employees went through it in its original format.

Based on an evaluation of this initial MSS program, the Ministry has revised the format and more than one hundred employees are currently in or have recently graduated from it. The Ministry trains about 160 staff each year. The program costs

about $8,000 per employee. This figure does not include salary, because the employee is partly usable after the first six weeks.

An overview of the new format follows:

- **Week 1** - Field Orientation, done at the new employee's local office, conducted by the team leader, the child protection consultant and the regional child protection manager;
- **Weeks 2-6** - Classroom training in any of five macro-regional locations, depending on the number of new employees in each area of the province. The Ministry currently relies primarily on field staff who have training skills and delegated authority to do the training. The Ministry is considering additional improvements to this format. At present only one day is devoted to aboriginal issues and there is consideration being given to increase this to one week.
- **Week 7** - Field work shadowing with a child protection social worker, an introduction to the management information system and writing a 45-question partial delegation test, done at the employee's local office. The employee is required to get at least 80% on the delegation test, following which she or he is authorized to perform a limited set of delegated functions.
- **Weeks 8-17** - During this time the employee is in field practice and expected to complete a series of field guide activities, under supervision. The supervisor is required to sign off that all field guide activities have been completed before the employee can return for Weeks 18-20 classroom training. A recent survey of employees has shown that the field practice experience is, at best, spotty. The Ministry is taking steps to improve this. In this regard, the Ministry may consider the use of mentors who meet certain criteria, and possibly look at dedicated mentoring offices. Mentors are supposed to have reduced workloads, but caseload demands often interfere.
- **Weeks 18-20** - Classroom training.

The Ministry has developed an 80 question final delegation test on which students must score at least 80% in order to receive delegated authority. Those passing with a low mark receive individualized remedial training.

The Ministry recognizes that new employees who have practised in other provinces may not need to take the full 20-week program. Based on a prior learning assessment, they may require two or three weeks of the classroom training in such areas as risk assessment, aboriginal issues, multicultural issues and BC legislation. The logistical problem is that these new employees may have to wait several months before the modules they need are taught as part of the 20-week program. In the meantime, they are not permitted to practise as child protection social workers.

I am satisfied that because the Strategic Plan for the Child Protection Division shows a clear commitment to life-long learning, the Division will continue to revise and improve the comprehensive training program for new child protection workers.

ii. Continuing professional development

Gove Recommendation 64: The province should develop and fund a comprehensive continuing development program for child protection social workers. A first step in that direction should be to adopt immediately a voluntary program of 24 hours of continuing professional development per worker each year. Provincial funding should include associated travel, accommodation and replacement staff costs.

Gove Recommendation 65: Decisions about specific continuing professional development courses should be made jointly by social workers and their supervisors, based on worker performance, service needs, professional standards and application of the course to the workplace.

Gove Recommendation 66: The delivery formats and length of continuing professional development courses should be varied in order to save time, enhance self-study and produce measurable results.

Original Rationale:
Although the collective agreement gives social workers ten days of paid leave per year for professional development, few workers take advantage of this time as there are few rewards for doing so. Management does not set professional development targets for each worker. Professional development is not considered as part of the annual performance appraisal system, and backfill workers are normally not provided. Setting voluntary targets would be a first step towards a mandatory professional development program.

Status:
Committed; work in progress.

Ombudsman Observations:

The Ministry has developed a five-year Strategic Plan for child protection social work training with four competency levels:

- *Level 1* - entry level: competencies that new employees bring with them.
- *Level 2* - competencies upon completion of the 20-week training program.
- *Level 3* - to be met via three courses taken during the worker's first year of employment in the areas of substance abuse in protection cases, neglect and

suicide prevention. Upon satisfactory completion of these courses, the worker is eligible for the Certification Test.

- *Level 4* - senior practitioner level: ongoing professional development and multi-disciplinary team training to develop competence in performing complex and specialized work activities.

Most Ministry child protection social workers have already attended a 2½ day training program on the new Risk Assessment Model. Employees who have just completed the 10-month concentrated BSW program are scheduled to receive the risk assessment training shortly.

All 900 existing social workers will be receiving a 4½ day training program on Investigative Interviewing. Phase 1 (October 1997 to March 1998) will be for specialized intake investigative teams, child protection managers, child protection consultants, district supervisors and child protection intake social workers. Phase 2 (April to December 1998) will be for all remaining child protection social worker staff. Those who received three days of investigative interviewing as part of the 20-week training program will receive a modified one-day version of the training.

When the new Ministry was created, 112 training programs came over from the five other ministries, as well as 40 other training initiatives for contract sector workers. It is clear that the Ministry's first priority has been to develop training for child protection social workers, particularly the 20-week program, and training in risk assessment and investigative interviewing. Significant logistical problems in scheduling these core training programs continue and are compounded by the scarcity of social workers to provide backfill who have both a BSW and the 20-week training program.

The Ministry has put considerable effort into getting this basic package of child protection training up and running, and has not yet had time or resources to develop much other professional development programming. The training division plans to develop multidisciplinary training programs in association with the universities, and integrated case management programs. The Ministry plans to give priority to the education of employees on the value of multidisciplinary teamwork, a situation that needs to be addressed before they can work on integrated case management.

Ombudsman Finding and Recommendation #17:

The directive in Recommendation 64 regarding the voluntary program of professional development will not be tracked because an employer cannot enforce a "voluntary" program involving its employees. As the Ministry expands on its commitment to life-long learning, as it has in the Child Protection Division, and fully develops its work plans and

training for staff, I am optimistic that staff will engage or continue to engage in self-directed professional development on their own volition.

I therefore recommend that the Ministry continue to provide opportunities to enable staff to engage in professional development.

iii. Training in the use of confidential information

Gove Recommendation 25: Ministry social workers should receive training on the use of confidential information in child protection practice.

Original Rationale:
The Inquiry found that social workers were very confused about what information they were entitled to share with contract service providers, and what information they could access from the ***GAIN Act*** files.

Status:
Fully implemented.

Ombudsman Observations:

New employees receive a half-day of training on Confidentiality during Week 3 of the 20-week training program. In July 1996 the former MSS published a booklet entitled "Confidentiality and Disclosure," which discusses the complicated rules respecting confidentiality and disclosure under the ***Freedom of Information and Protection of Privacy Act,*** the ***Child, Family and Community Service Act*** and the ***Young Offenders Act.*** In June 1997 the Director circulated to all child protection staff the "New Ministry Information Sharing Policy." All staff have received training on this issue in relation to the new ***CF&CSA***.

Judge Gove's immediate concern was the sharing of relevant case information with contract sector workers and foster families. While the Ministry's material does state that all of the relevant legislation does "allow service providers to share personal information with one another when necessary to ensure the safety and well-being of a child," the focus of both documents is much more on the legal complexities resulting from freedom of information legislation.

In my opinion, the Ministry needs to remain cognizant of the paramountcy test of safety and well-being in s. 79 of the ***CF&CSA*** in managing any and all future problems regarding confidentiality of information.

b. Other child welfare service providers

Gove Recommendation 60: The ministry, in consultation with other ministries, the child welfare contract sector (including employers, unions, professional regulatory bodies) and relevant education/training institutions, should review current contract practices and define province-wide standards governing the qualifications and training required for child welfare workers. At a minimum, this should include:

a. ensuring that all contracts specify the qualifications and training required by child welfare workers to perform effectively the work required,
b. encouraging self-regulation, by amending the *Health Professions Act* to include child welfare workers,
c. providing reasonable access to education upgrading and advanced training opportunities for supervisors and senior practitioners in the contract child welfare sector, and
d. providing increased access to interdisciplinary training programs relevant to child protection provided to public sector workers.

Original Rationale:

The Inquiry found that contract sector workers, who work far more closely with at-risk children than do Ministry social workers, often know the child and family best, yet are the least qualified and trained, and most poorly compensated. The government assumption that contracted agencies will adequately train their workers is flawed; few contracts specify training standards for each job function and match this with a fair salary, and the Ministry allows contractors only $150 per worker per year for training and upgrading.

Status:

Not implemented.

Ombudsman Finding and Recommendation #18:

I find that the Ministry has not taken responsibility for contract sector training, either by doing it itself, paying for it or by setting standards.

I recommend that as part of the contract restructuring currently underway, the Ministry must ensure the inclusion of provisions regarding training that is compulsory and fully funded for all of those working in the contract sector, in accordance with the Recommendation by Judge Gove.

c. Medical profession

Gove Recommendation 61: The Ministry should work with the College of Physicians and Surgeons, the University of British Columbia Medical School, the British Columbia Medical Association, British Columbia's Children's Hospital and other teaching hospitals in British Columbia to ensure that members of the medical profession are appropriately trained in the prevention, identification and treatment of child abuse and neglect, and in how to work as part of an interdisciplinary team with other service providers. At a minimum, the goals of this work should include:

a) reviewing and enhancing core medical school curricula to ensure that all graduating physicians are competent and knowledgeable in the diagnosis, assessment, referral and follow-up required for all forms of child abuse and neglect,

b) requiring, as a condition of licensure for physicians and surgeons, a demonstrated knowledge in the area of child abuse and neglect,

c) testing, as part of fellowship examinations for family medicine and pediatric specialties, to a high standard of competence in the identification, diagnosis, assessment and follow-up of child abuse and neglect, and

d) working with other child welfare professions and service organizations to improve cross-disciplinary approaches to training and professional development intended to combat child abuse and neglect through, for example, implementation of joint protocols in a revised child abuse handbook.

Original Rationale:
Although the ***Inter-Ministry Child Abuse Handbook*** includes a protocol for health professionals when dealing with child abuse and neglect, the Inquiry found that very few professionals applied the Handbook in Matthew's case. Many submissions stressed the need for enhanced training for physicians.

Status:
Not implemented.

Ombudsman Observations:

The Ministry plans to use a consultant to work with the UBC Faculty of Medicine to enhance the curriculum on child abuse and neglect issues.

Ombudsman Finding and Recommendation #19:

I find that this recommendation has not been implemented. I find it unreasonable to require the Ministry, however, to bear full responsibility for this recommendation. The new *Handbook for Action*

on Child Abuse and Neglect **will be distributed by the Ministry of Health, which is responsible for distribution to the medical profession.**

Given the involvement Matthew had with medical professionals, I recommend that all those with whom the Ministry was to work under Recommendation 61 assume responsibility for ensuring the education of their members about child abuse and neglect and the duty to report.

I urge the Ministry to offer its expertise as a resource both to the UBC Faculty of Medicine and the College of Physicians and Surgeons of BC.

d. Police

Gove Recommendation 62: The ministry should work with the Ministry of Attorney General, the Justice Institute of British Columbia and relevant police authorities to ensure that revised and updated protocols in the *Inter-Ministry Child Abuse Handbook* are made part of the basic knowledge taught in police recruit training. RCMP recruits or transfers to British Columbia should have a summary of the protocols as required reading in their orientation kits.

Gove Recommendation 63: The ministry should promote and participate in more joint training with the police, particularly on risk assessment, interviewing and investigative skills.

Original Rationale:
Police do not receive sufficient training in how to identify child abuse and neglect.

Status:
Committed; work in progress.

Ombudsman Observations:

The Justice Institute and the Police Academy already provide training about child abuse and neglect, relying on the 1988 Handbook. The new ***Handbook for Action on Child Abuse and Neglect*** will be circulated to all police forces by the Ministry of the Attorney General. The Ministry is willing to participate in training police recruits on child abuse and neglect.

Ombudsman Finding and Recommendation #20:

I find the recommendations have not been fully implemented.

I recommend that the Ministry continue its work with the Ministry of the Attorney General and in particular:

- **the Ministry of the Attorney General circulate the new *Handbook for Action on Child Abuse and Neglect* to all municipal police forces and to all RCMP detachments in the Province; and**
- **the Attorney General communicate in writing to the BC Association of Chiefs of Police and to the Commanding Officer of the RCMP, "E" Division, the importance of training recruits (and, in the case of the RCMP, transfers to British Columbia) about the *Handbook* and the protocols contained in it.**

e. Interdisciplinary training

Gove Recommendation 67: The range of interdisciplinary, inter-agency professional development programs on child welfare issues should be broadened, and courses should be delivered more frequently and in more areas of the province. The Justice Institute of British Columbia should be given a strengthened mandate and funding to deliver these programs across the province.

Original Rationale:
The Inquiry heard from many professionals that there were few training opportunities on child welfare issues.

Status:
Committed; work in progress.

Ombudsman Observations:

The Ministry has two pilot projects on multidisciplinary training, but has discovered that some employees are having real difficulty making the transition to the new multidisciplinary Ministry. Consequently, the Ministry has had to work on teamwork building and understanding what other professionals do, before getting into the circumstances in which different professionals should work together to provide seamless service to clients.

The Ministry has plans to develop multidisciplinary professional development programs as contemplated by this recommendation.

Discussions are underway about physically locating the new employee 20-week training program at the Justice Institute of BC, which would facilitate inter-agency sharing.

Ombudsman Finding and Recommendation #21:

I find that the Ministry has plans in place to proceed with this recommendation. Some regions have been more successful than others in adopting a multidisciplinary team approach.

I recommend that the Ministry continue to provide this training itself and in partnership with the Justice Institute of BC and others.

7. Quality assurance

a. Internal complaints process

Gove Recommendation 39: Children, parents and caregivers who are affected by administrative decisions about child welfare service delivery:
a. need consistent, accessible complaints procedures and recognized bodies to review those decisions, and
b. need to be informed of their right to a review of the process involved and of their right to advocacy.

Gove Recommendation 41: Each district office should establish a fair process for receiving, investigating and responding to complaints about the delivery of child welfare services.

Original Rationale:
A comprehensive system for reviewing administrative decisions would include, at the first level, a process for internal review, performed by the decision maker's supervisor or a supervisor from another office. This should be a prompt, informal process.

Status:
Fully implemented.

Ombudsman Observations:

The Ministry's new internal complaints resolution system took effect on October 27, 1997. The Central Operating Agency has set provincial policy, and each region is responsible for developing its own procedures in order to fully implement the policy. The first level of review is for the employee involved to reconsider his or her decision. If that does not resolve the complaint, it is referred to the ROO or a manager designated by the ROO, (usually the Quality Assurance Manager), who must have had no direct involvement in the decision under review. The Ministry's internal process must be completed within 30 days of receipt of the complaint.

The Ministry will also ensure that complaints from clients about contracted services are either resolved satisfactorily by the contractor directly, or are reviewed by the Ministry's own internal complaint resolution process. The status of complaints will be tracked by a computerized complaints tracking system, accessible by Ministry staff from anywhere in the province.

Getting There

A great deal of work has gone into the development of this internal complaints resolution system. The Ministry consulted with the Children's Commission, the Child, Youth and Family Advocate, the BC Civil Liberties Association, service providers and the Ombudsman's Office in developing the process.

The Ministry has published a "Complaint Resolution Process" brochure, and has circulated 100,000 copies to all Ministry offices, third parties, schools and libraries. The brochure has been translated into five languages other than English. Each district office displays posters and brochures to inform clients about the complaints resolution process. Staff are to inform children in care about the process as well as give the children a brochure. The Ministry has also requested contractors and agencies that provide service to Ministry clients to have brochures available to clients who may be dissatisfied with the Ministry's services.

The Children's Commission is an external review body whose responsibilities include responding to allegations that the rights of a child in care, established in s. 70 of the ***CF&CSA***, have been violated, and to complaints about the quality of services provided to children and youth.

The Ministry's complaint resolution process and the mandate of the Children's Commission meet this recommendation.

b. Audit and Review Division

Gove Recommendation 116: The Ministry of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following: . .
f. restore the mandate of, and provide adequate staff for, the Audit and Review Division.

Gove Recommendation 29: The ministry should systematically audit the manner in which child welfare services are delivered, to ensure that provincial standards are being met or surpassed. Each district office's case files should be audited according to a predetermined audit cycle on a random basis.

Gove Recommendation 30: The ministry's practice audit process should include assessment of the exercise of professional judgment.

Gove Recommendation 31: The ministry's practice audit process should be completely separate from the system that delivers and manages the child welfare program, to ensure independence and objectivity.

Gove Recommendation 32: Practice audits should be conducted, and reports should be prepared, in a manner that will lead to constructive improvements in the delivery of child welfare services. When the ministry receives practice audit findings, it must take action to improve service delivery and to reform provincial practice standards, qualifications, training and service design.

Original Rationale:
The Inquiry discovered that the Ministry's practice audit program had been shut down, for a variety of reasons. Even when operating, it never met the goal of auditing each office once every three years, and inspectors were not explicitly required to assess social workers' professional judgment.

Status:
Full implemented.

Ombudsman Observations:

The mandate of the Audit and Review Division (ARD) has been restored. There is a Manager, Audit and Evaluation who reports to the Deputy Director, Quality Assurance, who in turn reports to the Director of Child Protection. There are two staff practice analysts, and there is a budget for retaining outside auditors, trained by the Ministry. The Ministry's schedule for practice audits, based on a three-year rotation, will be available in early 1998. To date it has completed 12 audits, and six

more are scheduled. In addition to regular audits, the Ministry uses its staff practice analysts to perform "emergent" audits, when concerns are raised about a particular office through a Children's Commission review.

The Division is developing a self-audit tool for use by regional child protection managers, based on a set of Child Protection Standards that the Director of the Division has developed. It is intended that each manager will perform the self-audit every four months. Summaries will be forwarded to the Director, for the purpose of identifying patterns. The Ministry claims that the regional child protection managers are far enough removed from line workers to be objective in their reviews, particularly since their work is complemented by a central audit program.

Auditors look for the exercise of professional judgment in risk assessment decision making, and the Director is developing a series of questions that auditors will ask, when analyzing judgments around each risk assessment decision.

As of September 30, 1997 the Division had received 585 recommendations from the Children's Commission, Child and Family Review Board, Director reviews (formerly ARD reviews), Coroner reports, Deputy Director fatality reviews and regional reviews. The Division has developed a system to track these recommendations, and one staff member is assigned full time to this task. Those to whom specific recommendations are directed are required to document in writing to the Director that the recommendation has been acted upon.

In conclusion, the mandate of ARD has been fully restored and extended well beyond these Gove Recommendations.

c. Licensure of child welfare resources

Gove Recommendation 35: Provincial licensure of child welfare resources should become an integral part of the child welfare system, and licensure needs to extend to all child welfare resources.

Ombudsman Report No. 22 Recommendation 6: That government, in consultation with appropriate caregiver contracting and educational organizations, act to establish, by legislative enactment, a comprehensive licensing or certification mechanism to be uniformly applied, monitored and enforced across all ministries which fund contracted residential child and youth care facilities including

a) family based resources for one or two children or youths,
b) family based group living resources for three or more children or youths,
c) staffed facilities, and
d) receiving and assessment resources or facilities,

and that resource and facility categories be defined and regulated.

Original Rationale:

The ***Community Care Facility Act*** sets standards for adult and child residential and daycare resources through licensing. However, many residential child welfare programs, such as foster homes, residential programs with fewer than three residents, youth containment centres, mental health homes and daycare centres for fewer than three children, are exempt from licensure. In the absence of evidence that relevant ministries ensure that the services they fund meet acceptable standards, there should be no exceptions. The Ombudsman's ***Public Report No. 22*** (1990) recommended a specialized regulatory scheme for children, along with a comprehensive licensing and certification mechanism. The Ombudsman's recommendations have never been implemented.

Status:

Committed; work in progress.

Ombudsman Observations:

Licensure schemes tend to focus only on physical attributes, not on the quality of programs. Rather than develop a licensure scheme, the Ministry is developing an accreditation program, as discussed above under Recommendation 58, which would apply to all contract sector agencies receiving at least $350,000 annually from the Ministry.

For agencies below the $350,000 threshold, the Director is developing "Standards for Residential Services Under the ***CF&CS Act***," which would complement but be more detailed than the Accreditation Scheme discussed above. The Ministry would pay extra money for group homes and other child-serving facilities to be audited.

Ombudsman Finding and Recommendations #22 and #23:

I find that the Gove Recommendation has not been implemented. The two initiatives, however, demonstrate a commitment to rectify the problem underlying the recommendation.

I recommend that the Ministry continue its work on the Accreditation Program and the Standards for Residential Services.

In addition, I recommend that the Ministry work with the Office of the Comptroller General to develop a quality assurance mechanism to include these residential standards as conditions, either as part of the accreditation process or Standards for Residential Services, under the terms of the contracts. These standards would be in all contracts (though the kind of standard may vary depending on the value of the contract or the nature of the resource) with all child welfare resources regardless of the size of the contractor's budget or the number of children served by the contract agency.

d. Clinical supervision

Gove Recommendation 23: In addition to having social worker qualifications and training, supervisors should have specialized training on how to supervise.

Gove Recommendation 26: All social work decisions and plans that are required to be countersigned by a supervisor should in fact be signed by a duly trained supervisor.

Gove Recommendation 28: Supervisors must have adequate time to provide social workers with supervision.

Gove Recommendation 33: Clinical supervision needs to be an integral part of the delivery of child welfare services. For this to happen, supervisors need to:
a. be professionally qualified,
b. receive training in clinical supervision skills, and
c. be rewarded for making clinical supervision and mentorship a key part of their daily activities.

Original Rationale:
Supervisors need to be experienced clinicians, with additional abilities to supervise cases, train and coach line social workers and conduct day-to-day management and administration of the district office and staff. Many supervisors lack professional social work qualifications and training, and have no supervision training.

Status:
Committed; work in progress.

Ombudsman Observations:

The *Policy Manual* specifies the situations in which a social worker decision must be "signed off" by a supervisor. The child protection Standards that the Director has developed reinforce these obligations, and a policy directive prohibits the same person signing as line worker and supervisor. If the local office Clinical Supervisor or Team Leader is either absent or not a delegated social worker, the decision must go up to the regional level for countersigning.

Although newly-hired supervisors need at least a BSW, many of those already in the system who were district supervisors or who have been promoted to Team Leaders have no social work degree, and the concentrated BSW program did not give priority to supervisors. The Ministry has developed a clinical supervision training program, consisting of two three-day modules. The first module focuses on getting supervisors

to think about case and family dynamics. The second module has been piloted twice, but not yet implemented.

Team Leaders are key elements in improving the quality of child welfare practice. There is a serious "cultural" challenge in getting many of them to think in a multidisciplinary manner. There will be regular seminars for supervisors in five macro-regions, focusing on clinical practice and supervision.

Ombudsman Finding and Recommendation #24:

I find that these recommendations have not been fully implemented.

In order to ensure these recommendations are fully implemented, I recommend that:

1. **Clinical Supervisors be given priority in all opportunities for concentrated degree programs in social work and equivalencies;**
2. **The Ministry support the Director's efforts to provide regular seminars for Clinical Supervisors; and**
3. **The Ministry support the Director's initiative with the PSERC and the BCGEU to create incentives that will fully recognize the nature of the work of Clinical Supervisors.**

e. Annual performance assessments

Gove Recommendation 34: Annual performance assessments need to be an integral part of the delivery of child welfare services. For this to happen:

a. supervisors need to receive training in conducting annual performance assessments,
b. supervisors and social workers need clearly articulated expectations about what will be assessed, what criteria will be used, and what professional development opportunities will flow from the assessment process, and
c. the annual review of a supervisor's own performance needs to include an examination of how conscientiously the supervisor has conducted annual performance assessments of social workers.

Original Rationale:
The Auditor General's 1992 report found that 40% of district supervisors did not do annual performance assessments, half considered them useless, and many were dissatisfied with their own assessment training.

Status:
Not implemented.

Ombudsman Observations:

The Ministry has plans for child protection supervisor training consisting of four levels of competency. Level 1 competencies are those that they bring to their supervision job. Level 2 consists of two one-week modules dealing with case practice and leadership training.

It is up to each ROO to ensure that annual performance assessments are done. The performance assessment tool needs to build in the competencies to be tested.

Ombudsman Finding and Recommendation #25:

I find that the recommendation has not been implemented. The Strategic Plan of the Child Protection Division articulates a clear commitment to life-long learning. The Vision states:

> ***Competent staff delivering the highest quality of child welfare services to British Columbia children and families, engaged in ongoing professional development.***

I recommend that the Ministry:

1. **Provide all staff with regular and personalized professional work plans;**
2. **Provide Clinical Supervisors and team leaders with training in how to do performance assessments in a manner that will be seen as constructive, focused, and that will assist the individual to engage in ongoing professional development; and**
3. **Include in the Clinical Supervisor's own work assessment an evaluation of how conscientious the supervisor has been about conducting employee performance reviews.**

f. Review of continuing custody orders

Gove Recommendation 37: Every district office should examine at least annually the case plan for every child who is the subject of a continuing-care order, to prevent "foster home drift."

Original Rationale:
Giving children in care, their parents and other caregivers the opportunity to have placement decisions reviewed is not enough, because such reviews require them to initiate action based on perceived problems. It is in keeping with the new ***CF&CSA*** emphasis on timely placement decisions relating to continuity in children's care that the Ministry be responsible to review annually and automatically each continuing custody order, as occurs in Ontario.

Status:
Fully implemented.

Ombudsman Observations:

Ministry policy requires reviews of many types of plans of care, not just continuing custody orders. With respect to comprehensive plans of care (which include continuing custody orders), the plan of care must be reviewed:

- first, within three months of the date the plan of care was developed;
- subsequently, at least every six months while the child is in care; and
- as required, when any significant changes occur, such as:
  - the overall goal for the child changes;
  - there is a significant change in either the parent's or child's circumstances; or
  - the plan of care no longer meets the needs of the child.

The Ministry intends to revise the policy, by adopting the ***Looking After Children*** program from England and Wales. It is described as "a complete planning, decision-making, reviewing and monitoring system for children in care." It is in use internationally, and has been adopted by six Canadian provinces. The Ministry intends to pilot the program in April 1998 and go province-wide by October 1998. The Ministry also intends to build "foster care drift" risk factors into the MIS SWS (Management Information System for Social Work Systems), so that it is able to flag cases of children in care with a high number of risk factors, and have their plans of care reviewed.

The Ministry policy goes well beyond the Gove Recommendation and meets the requirement of Article 25 of the ***UN Convention on the Rights of the Child,*** that reads:

> *States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.*

(See the role of the Children's Commissioner with respect to this recommendation, discussed in this Report on pp. 113 - 125.)

g. Improving the child welfare system

Gove Recommendation 54: The provincial ministry responsible for child welfare must ensure that findings from death and injury reviews lead to improved service delivery, and that patterns and trends identified from reviews and other epidemiological sources lead to reforms in provincial practice standards, qualifications, training and service design.

Original Rationale:
The Inquiry found that the Ministry did not make use of the death and serious injury information it had, or should have had, from reviews. It had no system for collecting this information and no policy or procedure for what to do with the information it had.

Status:
Fully implemented.

Ombudsman Observations:

The Ministry has a fully operational system to track all recommendations arising out of death and inquiry reviews made to the Ministry. As of September 30, 1997 the Division had received 585 recommendations from the Children's Commission, Child and Family Review Board, Director·reviews (formerly ARD reviews), Coroner reports, Deputy Director fatality reviews and regional reviews. The Division has developed a system to track these recommendations, and one staff member is assigned full time to this task. Those to whom specific recommendations are directed are required to document in writing to the Director that the recommendation has been acted upon.

8. Technological aids

a. Computerized child protection management information system

Gove Recommendation 6: The ministry should set up a task force to design and implement a computerized child protection information management system which will:
a. allow social workers to record case information, retrieve information, track cases and access information quickly and easily, and
b. reduce and simplify the number of documents social workers are required to fill out in the course of a protection investigation and assessment.

Original Rationale:
Judge Gove was concerned that the Intake forms used by MSS tempted intake workers to categorize the case prematurely as protection or voluntary services before adequate information was collected. The MIS SWS had very little space for social workers to record case information. Social workers who had to do an assessment after hours often had no access to the paper file, and the MIS had inadequate information about prior intakes.

Status:
Fully implemented.

Ombudsman Observations:

The Ministry has been improving MIS SWS, based on feedback received though monthly meetings of a SWS Working Group, which represents all ROOs and the COA. The system appears to meet most of Judge Gove's concerns. A social worker can now access a wide variety of files: family services, ***BC Benefits***, child services, daycare, family maintenance, SPMH, foster parents. Young offender files will be added within several months, as will files from alcohol and drug and mental health programs.

The Ministry no longer uses a paper intake form. When an intake is received, the information is entered directly into the computer case tracking system. The ***Intake and Child Service*** file contains data for most clients going back to June 1996. The system requires the intake worker to go through a series of screens, including prior contacts and collaterals. There appears to be adequate room for the worker to record anecdotal information about the most recent intake.

A most impressive feature of the system is that it requires the intake worker to go through the various stages of the new risk assessment model, to answer specific questions from the model, and to write in narrative responses when a risk factor is checked off.

There is much more information about prior contacts (going back to at least June 1996) than there used to be, which means that an intake worker anywhere in the province can ascertain the family's history instantaneously, day or night, and hopefully make a more informed assessment of the situation.

In Matthew's case there were serious practice errors in transferring the case file, each of the three times that Matthew and his mother moved to a different city. The present computer system is now programmed so that, when a file from one city is closed and a worker in another city subsequently decides to reopen it because of a new intake, an instruction is automatically sent to the last city ordering the paper file to be transferred to the most recent city.

When the new Ministry was created, the programs transferred from each of the five ministries brought their own management information system with them. These systems were incompatible with one another, and were woefully inadequate. A contract has been awarded to build a totally integrated MIS for the new Ministry.

b. Cellular telephones

Gove Recommendation 116: The Ministry of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following: . .

d. give intake social workers practical tools, such as cellular telephones, that will enhance their safety and enable them to make timely decisions.

Original Rationale:
Judge Gove heard from many social workers who felt at risk physically while investigating child abuse complaints in a potentially violent home or neighbourhood.

Status:
Fully implemented.

Ombudsman Observations:

In September 1996, when the Ministry was created, there were 198 cellular telephones province-wide. Since then, the Ministry has authorized the purchase of an additional 442, of which 82 were designated for child protection offices. In larger urban centres there is usually one cell phone for every three social workers. In rural areas, every social worker has one.

I suggest that the Ministry continue to consider the utility of a broad spectrum of technological aids that will enhance workers' safety.

c. Word processors

> Gove Recommendation 116(e): The Ministry of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following: . .
> e. give district offices technological aids, such as word processors with document assembly software, to assist in preparing for court applications.

Original Rationale:
Judge Gove was told that many social workers did not have access to a computer, and that even those who did found it very time consuming to prepare court documents. He was told that a social worker had to prepare more than 30 forms when preparing court documents for a child's removal.

Status:
Fully implemented.

Ombudsman Observations:

When the Ministry was created in September 1996 there were 973 PCs and 21 laptops. Since then, the Ministry has authorized the purchase of an additional 272 PCs, 122 laptops and 41 printers. According to a Ministry memorandum:

> *I have also directed that 140 personal computers be sent to Child Protection Offices. These PCs will ensure that each child protection social worker in the province has access to the Ministry's new Complaint Tracking System and networks, such as the Internet. In addition, of the 122 laptops purchased by the Ministry, I instructed that a laptop be provided to each child protection manager.*

The PCs have access to templates for the preparation of 20 different documents relating to court applications and plans of care.

In addition, every social worker has access to MIS SWS.

The new Ministry inherited more than 400 forms from programs transferred from the five ministries. Through a Zero-based Forms Project, the Ministry wants to reduce that number to 50.

This recommendation has been acted upon by the Ministry. I believe resourcing for technology should continue, but I appreciate that the Ministry must balance use of

resources for acquisitions of this kind with the need to provide direct services for children and youth.

9. Practice issues

a. Education of professionals and the public about the duty to report

Gove Recommendation 3: Professionals and the general public should be educated about their duty to make a report to the ministry if they have reasonable grounds to believe that a child is in need of protection.

Gove Recommendation 4: The ministry should engage in an educational program to tell professionals who provide services to children the circumstances under which a report of child protection should be made.

Gove Recommendation 5: The *Inter-Ministry Child Abuse Handbook* should be revised and updated. This should include the careful revision of all protocols related to child protection.

Original Rationale:
The Inquiry's research disclosed that many professionals do not report child abuse because they believe they need conclusive evidence to support their suspicions; they are uncertain about the meaning of "in need of protection;" they feel that the duty to report conflicts with principles of confidentiality and they lack confidence that the Ministry will respond adequately to the report.

The original Handbook, published in 1988, needs to be revised. The revision should include a careful review of the various protocols for inter-Ministry cooperation in the reporting and investigation of child abuse and neglect.

Status:
Committed; work in progress.

Ombudsman Observations:

The Communication Division of the Ministry has prepared a pamphlet for distribution to the public on the duty to report child abuse. The pamphlet is entitled ***"Keeping BC's Kids Safe."*** The Ministry believes that the public's understanding about the duty will improve once the pamphlet is in full circulation.

The new ***BC Handbook for Action on Child Abuse and Neglect*** is currently being finalized, and is to be published in early 1998. There are many explanations for the inordinate delay in completing the revised Handbook, some of which are understandable but are no longer persuasive.

The ministries responsible for overseeing agencies will circulate the new Handbook to their own constituents. The Ministry is committed to training its own staff and contract providers about the new Handbook, and each regional child protection manager will develop half-day and one-day training programs between January and June 1998, in coordination with the Justice Institute. The Ministry cannot be expected to do all the inter-Ministry training, but will facilitate it as much as possible within each region.

Ombudsman Finding and Recommendation #26:

With respect to Gove Recommendation 3, I find that the Ministry's proposed pamphlet is an educational tool designed to improve the public's understanding of the duty to report. While the pamphlet may also assist in educating professionals, I find that the Ministry cannot bear full responsibility for this area of education. I am satisfied that there should be closure on this aspect of these recommendations.

I find that the development of the new *BC Handbook for Action on Child Abuse and Neglect* shows a clear commitment to Gove Recommendations 3 and 4. I am seriously concerned, however, about the delay in finalizing and distributing the Handbook to all those working with children, as it is such a key part of the educational program.

I recommend that the Ministry give priority to the immediate release and distribution of the Handbook.

b. Intake

Gove Recommendation 7: The ministry should abandon the check list Intake form and instead require intake social workers to make professional judgments about the investigations and assessments they complete, which should be summarized on a computerized information system.

Original Rationale:
Judge Gove had concerns about the actual Intake form in use during Matthew's life. Its format permitted social workers to make decisions prematurely and to discount or fail to document information relevant to the report.

Status:
Fully implemented.

Ombudsman Observations:

As indicated above, the MIS SWS has eliminated the paper-based *Intake* form. Intake workers are now required to enter all the case information directly into the computer system, which requires them by its design to exercise professional judgment in addressing the various elements of the Risk Assessment Model. (See pp. 97 - 98 of this Report.)

c. Investigations

Gove Recommendation 8: All reports of new incidents of child abuse or neglect should be investigated, regardless of:
a. the credibility of the reporter, and
b. whether there have been previous investigations of similar incidents.

Gove Recommendation 9: Child protection investigations should be done by qualified and experienced social workers who have been specifically trained in investigation and risk assessment.

Gove Recommendation 10: When conducting investigations and doing risk assessments, social workers should do complete collateral checks and comprehensive social histories of the child and family.

Original Rationale:
Judge Gove was concerned that some of the reports respecting Matthew were discounted because of the lack of credibility of the complainants or because similar reports had been made before. He found that intake workers, often the least trained and least experienced social workers in the offices, were not qualified to exercise professional judgment in assessing risk, and that this situation was typical throughout the Ministry. He also found that many social workers in Matthew's case did not check with collaterals such as neighbours and physicians, and did not review the Ministry's files respecting Matthew and his mother in order to develop a comprehensive social history. In almost every case, each report was responded to in a vacuum, without considering the context of former Ministry involvement with the family.

Status:
Committed; work in progress.

Ombudsman Observations:

According to the Ministry, line workers are beginning to do better investigations, for three reasons: because of the new Risk Assessment Model, the use of specialized child protection teams with regional child protection consultants, and specialized investigative training.

A five-day training program on investigative interviewing started in the fall of 1997. It will be given to all child protection social workers, supervisors and managers, and will be taught by a social worker and a police officer. A test will be required at the end of the course. By June 1998 everyone will have been through the program. In the Ministry's view, social workers need to be more objective in interviewing parents and children, in order to ascertain exactly what happened.

Twelve hundred social workers have now been trained in the new Risk Assessment Model, and the Ministry is now starting Phase 2, which involves training community partners such as SPMH, probation officers and police officers. New employees receive risk assessment training as part of the 20-week program, but the Ministry will require that the new employees repeat the risk assessment training after they have had some practice experience.

The Risk Assessment Model and the investigative training program both stress the need for child protection social workers to check with collaterals and to do comprehensive social histories. The Ministry has also developed ***Standards for Child Protection***, which are effective as of January 1998. These Standards were prepared after an analysis of standards in all other Canadian provinces, the United Kingdom and some American states. They define the minimum required standard of practice to be provided in all child protection cases, and are equal to or exceed "national standards."

The Ministry has developed a series of specialized consultation services to assist child protection social workers, such as the Ministry regional multidisciplinary staff, Children's Hospital child protection team, a computerized specialized child protection resource data base and special telephone conference consultation. Specialized regional medical assessment is planned for the future.

Ombudsman Finding and Recommendation #27:

The Ministry has been working on a variety of initiatives, aimed at addressing Judge Gove's concerns: the Risk Assessment Model, regional child protection consultants, investigative interviewing training and the new Standards for Child Protection. Sound structural

elements are being put into place. What is more difficult to assess is the actual quality of decision making at the street level, based on sound child protection training and the exercise of professional judgment. I am optimistic that the quality of decision making is improving, but that much more needs to be done in training and supervision.

I recommend that the Ministry pursue these initiatives with vigour, and include in its annual review required by the Standards, an assessment and evaluation of the quality of decision making.

d. Risk assessment

Gove Recommendation 12: Assessment criteria should define:
- the areas of family life to be assessed,
- whose perspectives are to be included (e.g. family, professionals),
- the minimum acceptable time-frame to begin and complete assessments,
- how assessment practices are to be monitored and evaluated, and
- the documentation to be maintained by the social worker.

Gove Recommendation 13: Assessment procedures and protocols should be clearly defined and enforced by the ministry so that the child's safety and well-being are paramount in case planning.

Gove Recommendation 15: Child protection social workers must complete a comprehensive risk assessment when investigating a child protection report. The risk assessment should include corroboration from collaterals of explanations for injuries or neglect which the parent may give about the child. The assessment should not give "strengths" of the parent disproportionate weight.

Original Rationale:
Through the Policy Manual and training, MSS social workers were required to do prior contact checks, in-person interviews, family histories and collateral checks and, after the investigation, notify key people about the outcome. The Inquiry concluded that in Matthew's case, and probably throughout the MSS, these essential steps in a risk assessment were routinely ignored, and inadequate supervision failed to remedy the shortcomings.

Status:
Fully implemented.

Ombudsman Observations:

In 1996 the Ministry introduced a new Risk Assessment Model, which includes nine risk decision points:

- Investigating or not investigating a report
- Determining response time to a report
- Assessing the child's immediate safety
- Determining the child's need for protection

- Assessing the risk of future abuse or neglect
- Developing a Risk Reduction Service Plan
- Re-assessing risk
- Re-unifying a family
- Transferring/closing a case.

For each risk decision, the Model sets out detailed criteria to consider. For risk decision #3, for example, the Model includes a two-page form containing 15 questions about the parents and child, with space for the child protection social worker to fill in information.

The Ministry has planned a three-phase evaluation of the Risk Assessment Model. First, how was it implemented? Second, are social workers applying it properly? Third, does use of the Model make a difference?

An unknown is how consistently line child protection social workers are applying the Model, and the extent to which they are exercising professional judgment when assessing risk. The Ministry's Phase 2 evaluation, scheduled for 1998, should provide these answers. I urge the Ministry to complete that evaluation in 1998.

The Risk Assessment Model appears to be a very comprehensive tool, forcing social workers to address all the relevant issues and facts in making decisions about a child's safety. It is remarkably better than what existed prior to the Gove Inquiry.

e. Removal of a child from the home

Gove Recommendation 22: A social worker who considers that a child is in need of protection should apprehend and remove the child from an abusive or neglectful environment, and should not try to "second guess" what a judge will do once the case comes to court.

Original Rationale:
The Inquiry heard that many social workers believed they needed either incontrovertible physical evidence of abuse or a definitive "triggering event" that proves neglect. The Inquiry found that over half the children in care entered into care as a result of consent agreements, not a court order.

Status:
Fully implemented.

Ombudsman Observations:

The Risk Assessment Model and the new ***Standards of Child Protection*** are in place. They give greater advice and direction to child protection social workers on how to proceed in assessing risk and eliminate the tendency for workers to "second guess" the court.

f. Informing reporters of the outcome of an investigation

Gove Recommendation 14: All child care professionals and foster parents who make reports that children are in need of protection should be fully informed of the outcome of the investigation.

Original Rationale:
The Inquiry heard from physicians, police officers and teachers that they frequently did not hear back from MSS, after making a report, which left them wondering what, if anything, happened. Judge Gove felt that para. 16(2)(b) of the ***CF&CSA*** was a distinct improvement, but the qualification in subsec. 16(5) left the Director with too much discretion. He felt that undue concern for a parent's emotional harm or confidentiality concerns should never prevent the sharing of investigation results.

Status:
Committed; work in progress.

Ombudsman Observations:

The Director of Child Protection for the Ministry has a duty to report back to every reporter following an investigation, unless reporting would "cause physical or emotional harm to any person or endanger the child's safety."

The 1997 amendments to the ***CF&CSA*** added para. 16(3)(c), which provides that the Director must make all reasonable efforts to report the result of the investigation to "any other person or community agency if the Director determines this is necessary to ensure the child's safety or well-being." This provision will be proclaimed in force on February 28, 1998. The amendment appears to adopt a "need to know" test for reporting to collaterals which, in my view, is appropriate.

Ombudsman Finding:

While this recommendation has not been implemented, I am satisfied that there can be closure because it will be fully implemented with the proclamation of para. 16(3)(c) in February 1998.

g. Family group conferences

Gove Recommendation 1: The family group conference should not be used for children who are in need of protection.

Gove Recommendation 2: In other cases, the family group conference should be used only when:
a. there is an experienced, trained and competent conference coordinator, and
b. the child has an advocate who represents only that child's interests.

Original Rationale:
While family court conferences have worked well in some jurisdictions such as New Zealand, there are several dangers. The structure of the family conference disregards the dynamics of many forms of abuse, which often involve denial and collusion. It may also be ineffective in families where there is intergenerational abuse and a history of involvement with child protection services. The concerns and rights of parents and other adult family members may take precedence.

Status:
Committed; work in progress.

Ombudsman Observations:

The Ministry is working with family group conference experts from the Memorial University in St. John's, Newfoundland. The plan is to establish pilots in one or two regions in April 1998, to be evaluated in the fall that same year. Conferences will not be used at the front end, but in the latter stages of longer, ongoing cases.

The Ministry agrees with Recommendation 2, that the coordinator of family group conferences must be adequately trained, and that the child must be heard and/or have an advocate.

Ombudsman Findings:

I find that these recommendations have not been fully implemented. I am satisfied that there should be closure on these Gove Recommendations, however, because:

- The Director has the statutory discretion to refuse a family group conference where a child is in need of protection and the test is the safety and well-being of the child;
- For some groups such as the aboriginal community, family group conferences should not be ruled out absolutely; and
- The Ministry is committed to using competent coordinators and providing an advocate for the child or an opportunity for the child to be heard where family group conferences are used.

h. Case planning

Gove Recommendation 11: Social workers should develop service plans on the basis of the assessed needs of children and their families.

Gove Recommendation 16: All case planning should be child-centred and should be informed by ongoing professional assessment of the family's functioning in regard to the child's safety or well-being.

Gove Recommendation 17: Social workers who are responsible for case planning must ensure that services are delivered and that service goals are attained.

Gove Recommendation 21: Social workers should actively monitor and evaluate case plans with service providers.

Original Rationale:
Judge Gove was concerned that inadequate investigation led to faulty assessment of children's needs, which in turn led to inadequate or inappropriate case planning.

Status:
Committed; work in progress.

Ombudsman Observations:

Risk Decisions # 6 and #7 of the Risk Assessment Model focus on developing a risk reduction service plan and re-assessing the risk at various times and at critical points in the life of a child protection case. Social workers have been encouraged to try to have children over 12 years of age "sign-off" on a plan of care, as a measure of its being child-centred. There is still a need to improve child protection practice in this area. The new ***Standards of Child Protection***, as well as the Risk Assessment Model, address the responsibility of social workers to actively monitor and evaluate case plans with service providers.

Ombudsman Finding and Recommendation #28:

I find that the Ministry is committed to these recommendations as demonstrated by the policy framework governing case planning practice.

I recommend that the Ministry evaluate the effectiveness of this policy framework to ensure that:

- **a plan is based on the assessed needs of a child;**

- **a plan is child centered;**
- **professional assessment of the safety and well-being of the child informs the plan;**
- **a plan is resourced appropriately by services; and**
- **a plan is monitored and evaluated regularly by child protection social workers.**

Measuring for the effectiveness of case planning practice, while ongoing as part of quality assurance, should be documented and made available.

(See pp. 120 - 122 of this Report regarding the role of the Children's Commissioner.)

i. Sharing important case information

Gove Recommendation 18: Contract service providers (including foster parents) and child care professionals, such as teachers and physicians, who provide services to a child at risk should be fully informed of the child's background and present circumstances so that they can appropriately meet the child's needs.

Gove Recommendation 116: The Minister of Social Services should act immediately to implement the interim reform recommendations contained in this report, including the following: . . .
c. eliminate arbitrary rules and policies which inhibit the sharing of important case information among child welfare service providers.

Original Rationale:
Since most services provided to children and families are delivered by the contract sector, it is essential that Ministry staff share with such service providers key information about the family's background and present circumstances.

Status:
Fully implemented.

Ombudsman Observations:

Subsection 96(1) of the ***CF&CSA*** ensures that the Director has access to any information that is in the custody or control of a public body and is necessary to enable the Director to exercise his or her powers or perform the duties or functions under the ***CF&CSA***. This remedies, for example, the problem that child protection social workers were in the past prevented from accessing ***GAIN Act (now BC Benefits Act)*** information.

With respect to sharing case information with the contract sector, the Ministry advised that the general policy is to share "as necessary." The Ministry's information sharing policy has changed respecting contract service providers, so that full disclosure is now required.

I urge the Ministry to address the issue of information sharing in the ongoing contract restructuring process.

j. Relationship with contracted service providers

Gove Recommendation 20: The ministry should specify in its contracts with service providers the criteria to be used to measure outcomes, in order to determine the effectiveness of a case plan.

Original Rationale:
The Inquiry found that many MSS offices used standard form contracts with service providers that addressed financial and administrative matters, but were either blank or lacked detail respecting worker qualifications, work requirements, output measurements, standards, and monitoring and evaluation procedures. MSS staff were unclear what they were purchasing; contract sector agencies were unclear what was expected of them; and there was no way to determine the extent to which the services purchased were actually delivered.

Status:
Committed; work in progress.

Ombudsman Observations:

It is the intent of the Ministry to determine the competencies required for the various contract sector functions as part of its proposed accreditation initiative, and in the future, contracts with community agencies will specify what competencies are required and what outcomes (as opposed to tasks or outputs) are being purchased and funded by the Ministry.

Ombudsman Finding:

I find the Ministry is committed to pursuing Judge Gove's Recommendation, but everyone should recognize that in order to fully complete it will take considerable time.

k. File transfer policy

Gove Recommendation 19: All district offices and all social workers should follow the ministry file transfer policy.

Original Rationale:
Serious file transfer mistakes were made each time Matthew and his mother moved to a different town. This problem was compounded by MSS social workers not reviewing the relevant files during each intake or request for services.

Status:
Fully implemented.

Ombudsman Observations:

The policy on file transfers is clear, and is included as one of the new Standards for Child Protection. The MIS SWS automatically requires the transfer of a closed file when another office reopens the file.

Each manager will be required to develop a protocol respecting transfer of files from a specialized child protection team to ongoing protection service within one region, and for transfer within regions. I am confident that the Director of Child Protection will work to ensure that consistent standards are applied in the protocols developed by managers.

B. CHILDREN'S CENTRES

Gove Recommendation 97: Core child welfare service providers should be commonly employed and commonly funded, and should work together out of multi-disciplinary, community-based Children's Centres, which should deliver the following services;

- Child protection, family support, guardianship and adoptions;
- Services to children with mental disabilities;
- Child and youth mental health services
- Children's public health nursing programs;
- Infant and child development programs;
- Alcohol and drug treatment services for children and youth;
- Youth forensic psychiatric services;
- School based child and youth care services;
- Special education services, family court counselling services;
- Youth probation and related community justice services
- Child care subsidies and funding for child care resources and possibly also the following:
- Income assistance for families with children and for youth;
- Funding for transition houses; and
- Community, child and residential care facilities licensing.

Gove Recommendation 98: Child welfare support service providers should be located in Children's Centres, but not necessarily commonly employed, and should deliver services such as:

- Job training and rehabilitation services for youth;
- Child and youth recreation; and
- Native court worker and counselling services.

Gove Recommendation 99: Ancillary child welfare service providers, such as police, hospitals and youth containment centre staff should work with core and secondary support groups to ensure that services are delivered in a coordinated, multi-disciplinary manner.

Gove Recommendation 100: Children's Centres should control the contracting process, and should decide what services will be provided by private sector contractors.

Gove Recommendation 101: Contractors and their employees must be treated fairly and must have a forum to voice concerns about the way services are being delivered to children and youth.

Original Rationale:
The review of Matthew's life concluded that child protection services are only one element of the more inclusive notion of child welfare, that children's needs are typically multi-dimensional, and that child welfare services in BC have been provided through numerous provincial ministries and countless private agencies, with very poor coordination and sharing of case information.

In developing a new child welfare system, BC needs to start with the needs of children, and develop services and management structures that address those needs. Since children's needs are multi-dimensional, services should be delivered in a multi-disciplinary manner.

Judge Gove concluded that the only way to achieve these goals was to have all core child welfare service providers commonly employed, commonly funded and commonly housed in community-based multidisciplinary Children's Centres.

Transition Commissioner Report:
The Office of the Transition Commissioner recommended that, where possible and appropriate, the new ministry should establish co-located, commonly employed and age-clustered service delivery centres for child, youth and family services, as described in the report to the Premier.

Status:
Committed; work in progress.

Ombudsman Observations:

Government has achieved significant restructuring of the service delivery system. As previously noted, the Ministry for Children and Families has consumed the majority of services identified in these recommendations. There are now 20 regions of the Ministry with Regional Operating Officers responsible to oversee delivery of multi-disciplinary services to children and youth. Some regions are developing integrated offices so that clients can access a full array of services at one location. Contract restructuring is now the responsibility of each region.

It may be too early to make any final assessment of the extent to which the goal of delivering child welfare services in an integrated multidisciplinary manner has been achieved. Some regions are developing creative approaches to multidisciplinary practice; other regions are much farther behind. In my view, the delivery of integrated, multidisciplinary child welfare services is a pivotal element of the province's restructuring of services for children, youth and their families. This goes beyond providing all child welfare services in a community out of one physical location. It means that workers from various professional disciplines work together as part of a multidisciplinary team when making day-to-day case decisions about children and their families.

Ombudsman Finding and Recommendation #29:

I find that government has not fully implemented these recommendations. I recommend that the Ministry move ahead with this reform by supporting its regions to the extent they are able to operationalize these recommendations.

C. REGIONAL OPERATING AGENCIES

Gove Recommendation 102: The province should devolve to communities the responsibility for ensuring that a full spectrum of children welfare services are delivered in accordance with province-wide standards.

Gove Recommendation 103: The province should devolve to communities the responsibility for the day-to-day management of child welfare services.

Gove Recommendation 104: The province should establish approximately 20 Regional Child Welfare Boards to govern and manage the Children's Centres.

Gove Recommendation 105: The Regional Child Welfare Boards should:
a. be governed by a board of directors appointed from elected public officials;
b. allocate and approve Children's Centre budgets in their region;
c. be the employer of all Children's Centre staff in their region;
d. provide input in setting province-wide service standards;
e. provide input in the determination of qualifications and training of staff;
f. be responsible for designing regional or community specific services; and
g. be responsible for local professional development training for staff.

Original Rationale:
Having concluded that child welfare services should be delivered through community-based Children's Centres, Judge Gove examined various management models, concluding that the province should devolve its management responsibilities to the regional level, as had already been done with education, policing and health. This governance model gives local communities greater flexibility to supplement basic universal services with programs that respond to unique local needs.

Judge Gove concluded that the province should establish 20 regions, with the same boundaries as the new regional health boards. Child welfare services within each region should be managed by a regional child welfare

Status:
Not implemented.

board governed by a board of directors appointed from existing elected public officials, such as school boards, city councils, health boards and aboriginal groups.

Transition Commissioner's Report:
The Transition Commissioner reported that she did not believe "it is possible nor responsible to proceed with the devolution of the management of child and youth services to citizen-run regional structures at this time. This was recommended in the Gove Report."

Ombudsman Observations:

The Transition Commissioner did not recommend implementation of Gove's Recommendations 102 through 105.

The intent of respecting regional differences and the importance of supporting communities to be creative in meeting their own needs has been addressed in large part by the creation of 20 regions of the Ministry as noted under Section B, Children's Centres, in this Report.

I believe it to be inappropriate for the Ombudsman to recommend that government pursue these Judge Gove Recommendations. Government has chosen a different organizational structure of governance that reflects the same principles upon which the Gove Recommendations are based. It is possible that government will reconsider the current model of governance at a future date, if it believes that modification will add value to the safety and well-being of children.

Ombudsman Finding:

At this time, I am satisfied that there can be closure on Judge Gove's Recommendations.

D. CHILDREN'S COMMISSIONER

1. Establishment of Office

Gove Recommendation 49: The province should establish, by legislation, the office of an independent Children's Commissioner who would be appointed by Order in Council for a fixed term.

Original Rationale:
There are a number of functions that should be performed at the provincial level, but independently of the child-serving Ministry.

Status:
Fully implemented.

Ombudsman Observations:

The ***Children's Commission Act*** was brought into force on July 25, 1997. Subsection 2(3) provides for the appointment, by the Lieutenant Governor in Council, of a Children's Commissioner, who is appointed for six years and is eligible for reappointment. The Children's Commissioner reports directly to the Attorney General.

2. Death and critical injury reviews

a. Form of investigation or review

Gove Recommendation 51: The Children's Commissioner should be given responsibility for receiving reports of deaths and serious injuries of all children and youth who are in the care of the province or who are receiving child welfare services. The Commissioner should:

a. in the case of any death or serious injury which the Children's Commissioner determines to be suspicious or unusual, refer the case to a judge of the Provincial Court of British Columbia for whatever form of investigation the judge considers necessary, and

b. in every other case, decide what form of review or investigation is appropriate, assign the case and monitor the review or investigation. The Children's Commissioner should have the authority, at any time, to re-assign a review or investigation.

Original Rationale:
It is essential that every death of or critical injury to a child in care or to a child receiving child welfare services be independently reviewed, to determine if there was an inadequacy in the delivery of services or in the applicable policy. Judge Gove was attracted to the approach taken in Victoria, Australia, where a family court judge conducted an inquiry into child deaths. This would achieve the highest degree of independence and public confidence. In the case of deaths and injuries that were not considered suspicious or unusual, Judge Gove proposed that the Children's Commissioner would decide what form of review was necessary, and would supervise the review process.

Transition Commissioner's Report:
"These recommendations establish the office of the Children's Commissioner (see the section in the report dealing with the mandate, structure and process of the Children's Commissioner

Status:
Fully implemented.

as it varies from Gove's model). All are recommended for adoption except 51a, which reads:

a. in the case of any death or serious injury which the Children's Commissioner determines to be suspicious or unusual, [the Commissioner should] refer the case to a judge of the Provincial Court of British Columbia for whatever form of investigation the judge considers necessary."

Ombudsman Observations:

Paragraph 4(1)(a) of the ***Children's Commission Act*** empowers the Children's Commissioner to "investigate the death of any child if the commission considers an investigation is necessary to determine the adequacy of services to the child or to examine public health and policy matters." The Commission may also "collect information about critical injuries sustained by children while they are receiving designated services and investigate those injuries" (para. 4(1)(b)). Under BC Reg. 370/97, a "designated service" is defined as a service or program provided by the Ministry for Children and Families for a child in care, a child in the charge of the Director or a child in the Director's care under the ***CF&CSA*** or the ***Family Relations Act*** (subsec. 2(1)).

Consequently, the mandate of the Children's Commissioner is even broader than that contemplated by Judge Gove's Report. In the case of deaths, it includes *all* children in the province. The only reason her mandate does not extend to *all* injured children is that there is no one agency that tracks or reports all child injuries in the same way the Coroner tracks deaths.

The Transition Commissioner in reporting to government favoured a multi-disciplinary team model over the judicial model recommended by Judge Gove, based on "the availability of judges, current court backlogs, cost, timelines, consistency of reporting practices, and expertise." Minnesota has a similar model, which was adopted in Manitoba. In BC, two multidisciplinary teams were established by the Commissioner, one for children and another for youths, as a result of government adopting the revised recommendation by the Transition Commissioner.

The Children's Commission is notified of every child's death in the province. The Deputy Commissioner reviews the information and decides what form of review is appropriate. Every child-in-care death and every "suspicious or unusual" death leads

c. Monitoring adoption of recommendations

Gove Recommendation 53: The Children's Commissioner should monitor adoption of recommendations contained in a death or serious injury review report, and should comment publicly if the child welfare system does not respond adequately to a death or serious injury review.

Original Rationale:
Judge Gove found that, although MSS had a procedure for reviewing ARD reports, there was little evidence that such reviews, even if done, resulted in improved practice or policy. In other words, the Ministry's review of children's deaths did not lead to improved social work practice.

Status:
Fully implemented.

Ombudsman Observations:

In the case of children in care who die, the Children's Commissioner sends a full version of her report to the Director of the Child Protection Division of the Ministry, for "his eyes only." In all cases, an edited version is sent to relevant ministries or agencies such as hospitals or police, and they are given 30 days to respond. If the agency challenges the facts, the original investigator will re-investigate and revise the report as necessary and appropriate. The agency's response to the Commission's report becomes part of the public record.

The Children's Commission tracks all its recommendations, the responses it receives and the action it has taken or plans to take. In her January 31, 1997 report and her August 27, 1997 release of 35 investigation reports, the Commissioner summarized her recommendations and identified areas needing attention, such as provincial standards for hospital discharge practices respecting infants, and adolescent mental health services.

On February 3, 1998 the Children's Commissioner released her first Annual Report, including a Youth Report written in consultation with the Federation of BC Youth In Care Networks. Her Annual Report, ***Working Together to Better Serve Children and Youth*** details the first year of the work of the Commission, including:

- the review of the deaths of all children in the province;
- the review of critical injuries to children in the care of the Ministry for Children and Families;
- the review of continuing care orders for children in the care of the Ministry;

- the consultation with the Ministry for Children and Families to ensure access to the Ministry's internal complaints resolution process; and
- the Commission's role as an external review for those children and youth who believe that their rights articulated in s.70 of the ***CF&CSA*** were violated or who continued to have complaints about the services received from the Ministry.

The creation of a Children's Commission has been of immediate and significant benefit to children. The Commission is independent of the Ministry for Children and Families and for the first time in our province is able to inform government about detailed factors that have contributed to and caused the deaths of children so that comprehensive steps can be taken to prevent recurrence.

3. Continuing custody orders

Gove Recommendation 38: An independent provincial review authority (the Children's Commissioner) should automatically review every continuing-care order every 12 months. If the Children's Commissioner concludes, after consultation with a district office, that the continuing-care order should be cancelled or varied, the commissioner should refer the case to the Provincial Court.

Original Rationale:
While the ***CF&CSA*** recognizes the importance of timely placement decisions relating to the continuity of children's care, this is no guarantee that timely decisions will be made or that placement decisions will be periodically reviewed, especially when a child's circumstances change. Similarly, we cannot rely on the child or his or her caregivers to take the initiative in having a plan of care reviewed. The Ministry should regularly review every continuing custody order, and the Children's Commissioner should review every order annually.

Status:
Committed; work in progress.

Ombudsman Observations:

Paragraph 4(1)(g) of the ***Children's Commission Act*** provides that the Commission may:

in relation to plans of care for children in the continuing custody of a Director,

- *(i) monitor whether the standards set by the Director for those plans are being met,*
- *(ii) identify any of those plans that, in the commission's opinion, need to be reviewed by the Director, and*
- *(iii) conduct random audits of those plans.*

To fulfill subpara. (i), the Commission will identify the standards for plans of care set out in the ***CF&CSA*** (*e.g.* ss. 2, 3, 4, 70, 71) and the Regulations (*e.g.* 6, 8).

To fulfill subpara. (ii), the Ministry will download its MIS SWS data base respecting all 3,000 children in continuing custody. The Commission will analyze this data to identify categories of children who are particularly vulnerable, such as those of pre-school age, those approaching the age of majority, children who have a disability, children placed in institutions, aboriginal children placed with non-aboriginal families, and children with medical or behavioural problems. It will then review the electronic and paper files of children within these categories, to determine the appropriateness of their plans of care, or whether the Ministry has adequate information to design appropriate plans.

To fulfill subpara. (iii), the Commission is planning an audit program, which will be conducted randomly, within a specific geographical area or for a specific category of children in care.

If the Commission identifies plans of care that are inappropriate (as measured against the standards developed in subpara. (i) above) the Commission will report to the Director of Child Protection, and will monitor the Ministry's response. An inadequate response from the Ministry may trigger a complaint under s. 70 ***CF&CSA***, a referral to the Child, Youth and Family Advocate, or a public report by the Children's Commissioner.

The Transition Commissioner's report to government did not adopt Judge Gove's Recommendation about referring cases back to the Provincial Court because in most cases the issue is revising the child's plan of care (such as arranging a more suitable placement), rather than cancelling the plan altogether. The Court's only authority would be to cancel the continuing custody order.

The Children's Commission has a designated person responsible for these reviews, assisted by a systems analyst. The Commission hopes to have the Ministry's MIS SWS data within the next month, plans to do its first audit this spring and intends to publish its first report by the summer.

Ombudsman Finding and Recommendation #30:

The recommendation to do an automatic review of every continuing care order has not been implemented.

I recommend that the Children's Commissioner follow through with her plans, as they indicate a clear intention to follow this recommendation.

I am satisfied that there should be closure on the portion of the Recommendation calling for the Care Order to be referred back to the Provincial Court.

4. Independent investigation of complaints

Recommendation 42: Children, parents and other caregivers who are not satisfied with a district office's review of an administrative decision should have realistic access to an independent complaints investigator, who would have a mandate to resolve disputes without recourse to the Child Welfare Review Board.

Original Rationale:
Judge Gove felt that children and caregivers should have access to an informal, external complaint review process, short of the formalized Child and Family Review Board, where they could have decisions respecting s. 70 rights and other administrative decisions reconsidered. Such investigators, appointed by the Children's Commissioner, would have no decision-making authority, but would attempt to resolve disputes informally and, where appropriate, through mediation.

Status:
Fully implemented.

Ombudsman Observations:

Paragraph 4(1)(f) of the ***Children's Commission Act*** authorizes the Commission to review and resolve complaints about breaches of the rights of children in care, and decisions concerning the provision of designated services to children. A "designated service" is a service or program provided for a child by the Ministry for Children and Families (BC Reg. 370/97).

Since November 1997 the Commission has had jurisdiction to consider complaints respecting designated services. Section 10 of the ***Children's Commission Act*** provides that a person may make a complaint "about a decision concerning the provision of a designated service to a specific child." The Commission interprets this provision widely. "Decision" includes a decision made by a Ministry employee during the internal complaints resolution process, which may include the manner in which a child or family was treated.

When the Commission receives a complaint, it determines whether the complaint is within its jurisdiction. A complaint that is accepted will normally be referred to a staff investigator within three to five days of intake. The Commission may refer the complaint to an alternate dispute resolution process if appropriate. If a complaint is

not settled, the investigator delivers a written report in a timely fashion to the Children's Commissioner, who may refer it back for further settlement efforts, dismiss the complaint or refer it to the Tribunal Division.

The complaints review process established by the statute and put into operation by the Children's Commission responds admirably to three principal concerns underlying the recommendation: the need for independence, the advantage of being able to use an informal process and the positive outcomes when the process is focused on settlement.

The Commission's role as external complaint process to the Ministry for Children and Families will increase the confidence of Ministry clients that there are remedies to address concerns about the quality of services provided.

5. Child Welfare Review Board

Gove Recommendation 43: The province should transform the proposed Child and Family Review Board into a Child Welfare Review Board, with a mandate to review:

a. *the apparent breach of a child-in care's statutory rights under s. 70 of the Child, Family and Community Service Act, and*
b. *any other important administrative child welfare decision respecting entitlement to service or quality of service.*

Original Rationale:
Judge Gove felt that all important administrative child welfare decisions respecting entitlement to service or quality of service should be subject to independent review, and that the most logical forum would be a broadened Child and Family Review Board.

Status:
Fully implemented.

Ombudsman Observations:

The Tribunal Division of the Children's Commission has replaced the Child and Family Review Board. The Division is provided for under ss. 14-16 of the ***Children's Commission Act,*** and panel review procedures have been detailed in policy. Each panel decides how a review will be conducted, and the emphasis is on resolving conflict in a manner that best serves the needs of the particular child. A formal panel hearing is a "last resort." A panel may conclude that a complaint was not justified; it may terminate a review if it and the Children's Commissioner are satisfied that the complaint is settled in a manner responsive to the needs and interests of the affected child; or it may determine that the rights of a child in care have been breached or that a complaint about designated services is justified. Commission staff will monitor responses to panel orders and recommendations. If the Children's Commissioner determines that the reasons for failing to comply with a panel's order are not acceptable, she may report to the appropriate Minister and, after 30 days, make the report public.

The Tribunal Division fulfills the recommendation, in terms of the Division's independence and expanded jurisdiction. The policies and procedures developed by the Children's Commission respecting the Tribunal Division are formal, but provide procedural safeguards that may be necessary and appropriate, for those few cases that cannot be resolved at an earlier stage.

E. CHILD, YOUTH AND FAMILY ADVOCATE

1. Amendments to Child, Youth and Family Advocacy Act

a. Strengthen Advocate's mandate

Gove Recommendation 36: The role of the Advocate established under the *Child, Youth and Family Advocacy Act* needs to be strengthened by:

a. ensuring that the *Act* states unequivocally that the role of the Advocate is to advocate on behalf of children and youth, and to advocate on behalf of their families only when such advocacy is consistent with and promotes the interests of that family's children;
b. declaring publicly that the Advocate's mandate encompasses all child-related services provided or funded by the province. This could be accomplished by adding a schedule to the *Act* setting out the "designated *Act*" and "designated services" that will, over time, be brought within the Advocate's mandate, and
c. amending the *Act* to give the Advocate explicit authority to appoint legal counsel to represent children and youth individually or collectively, in appropriate circumstances.

Original Rationale:

Re: 36(a): The title of the ***Child, Youth and Family Advocacy Act,*** and the wording of subsec. 2(a) lead to the conclusion that the role of the Advocate is to advocate on behalf of children, youth and their families, without priority being given to the former over the latter. This would be wrong. The Advocate's duty is to advocate on behalf of children and youth, since because of their immaturity, vulnerability and powerlessness, they may be incapable of advocating on their own behalf.

Re: 36(b): If the Advocate is to have an effective voice on behalf of children, the office of the Advocate must encompass all child-related services provided by the government. While it is reasonable that the Advocate's mandate would initially be limited to the ***Child, Family and Community Service***

Status:

Re: 36(a) Fully implemented.
Re: 36(b) Not implemented.
Re: 36(c) Not implemented.

Act (until the Advocate gains experience and develops administrative structures), the government should state in a schedule to the ***Act*** its intent respecting which child-related services will eventually be included. The "authorities" listed in a schedule to the ***Ombudsman Act*** would be an appropriate model to follow.

Re: 36(c): Sometimes the only effective way to advocate on behalf of children and youth is through legal representation in court or administrative proceedings. If the Advocate has no authority to appoint counsel, the child or youth is left to the exigencies of legal aid or the Attorney General's family advocate program, both of which are unsatisfactory.

Ombudsman Observations:

Re: 36(a):
A new s. 4.1 (enacted by the ***Miscellaneous Statutes Amendment Act*** *(No. 3), 1997*, S.BC 1997, c. 29, s. 1, in force November 18, 1997 (see BC Reg. 383/97)) now reads:

> ***4.1*** *If the advocate identifies a conflict of interest between a child or youth and an adult family member while the advocate is performing his or her duties or exercising his or her powers or functions under this* ***Act****, the advocate must give precedence to and promote the interests of the child or youth over those of the adult family member.*

The addition of s. 4.1 substantially addresses Judge Gove's concern, although there is a subtle difference between his recommendation and s. 4.1. The recommendation states that the Child, Youth and Family Advocate should advocate on behalf of a family only when such advocacy is consistent with and promotes the interests of that family's children. Section 4.1, on the other hand, would permit the Advocate to represent an adult family member's interests in any circumstances, except where a "conflict of interest" exists. Conflict of interest is not defined in the statute and that is a concern. I suggest that the Ministry of the Attorney General give serious

consideration to reviewing the ***Child, Youth and Family Advocacy Act*** with a view to including a definition of "conflict of interest" or reconsidering that as the test to ensure that children and youth are always at the centre of the Child, Youth and Family Advocate's mandate.

Re: 36(b):
BC Reg. 119/97 (April 3, 1997) has added the ***Adoption Act*** as a second designated ***Act***, and has added three designated services in addition to those authorized, provided or funded under the ***Child, Family and Community Service Act*** and the ***Adoption Act***:

- drug and alcohol programs for children and youth;
- Children Who Witness Abuse component of the Stopping the Violence Initiative; and
- Child Care Programs.

Responsibility for amendments to the advocacy legislation was transferred to the Ministry of the Attorney General during the last legislative session.

In her 1996 Annual Report, the Child, Youth and Family Advocate reported that 40% of the concerns raised with her office fell outside her mandate, and she recommended to the Legislature and Cabinet that:

> *The mandate of the Advocate be expanded to include all programs and services under the Ministry for Children and Families, regardless of their legislative origin.*

Re: 36(c):
In her 1996 Annual Report, the Child, Youth and Family Advocate discussed Judge Gove's Recommendation 36, concluding that this was a systemic issue that needed to be addressed, and that her office would continue to play a monitoring role. In the interim, she recommended to the Legislature and Cabinet that:

> *the Ministry of the Attorney General and the Ministry for Children and Families jointly produce and make widely available information about all potential avenues for children and youth to receive legal representation, including eligibility rules and limitations. This information needs to be published in a user-friendly fashion, including examples and contact names and phone numbers.*

While this information will be useful and I concur with the Advocate, I believe her recommendation does not fully respond to Gove Recommendation 36(c).

Ombudsman Findings and Recommendation #31:

Re: 36(b):
I find there has been little increase in the numbers of designated services added to the Child, Youth and Family Advocate.

The Children's Commission provides an external review mechanism for all children and youth in receipt of services from the Ministry.

With a view to ensuring an integrated and compatible system of accountability, I recommend that the Child, Youth and Family Advocate have the legislated authority to advocate for all children and youth in receipt of services or in need of services from the Ministry, in line with the mandate of the Children's Commissioner. The Child, Youth and Family Advocate reported in her Annual Report (1996) to the Legislature that all these services should be designated under her *Act*. I agree.

Re: 36(c):
Article 12.2 of the *UN Convention on the Rights of the Child* states:

> ***For this purpose, the child shall in particular be provided 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.***

In criminal proceedings, youth are entitled to counsel that may be provided through the Legal Services Society.

In custody and access matters, the Court can recommend the appointment of a lawyer who is the Family Advocate to represent the interests of the child before the court.

In child protection matters, the Ministry is statute bound to represent the interests of the child or youth to the court through its counsel.

In civil proceedings a child can be represented by counsel through the Office of the Public Trustee.

While more resources may need to be devoted to these existing means by which a child or youth can have legal representation, having the

Child, Youth and Family Advocate able to retain counsel may be counterproductive and unnecessary.

I am of the opinion that the "non-legal" kind of advocacy provided through the Child, Youth and Family Advocate ought not to be altered or transformed by the ability to formalize the advocacy through the appointment of a lawyer by the Advocate for a child or youth. This does not mean that the Advocate herself cannot retain counsel to bring matters of importance to children and youth before the courts.

I am satisfied therefore that there should be closure on this aspect of the Gove Recommendation.

b. Reports to the Legislature and the public

Gove Recommendation 92: The Child, Youth and Family Advocacy Act should be amended to incorporate powers similar to those found in s. 24(1) [now subsec. 25(2)] and s. 30(2) [now subsec. 31(2)] of the Ombudsman Act.

Original Rationale:
The Advocate needs explicit authority to report publicly between annual reports on behalf of an individual or a group, to speak out publicly on a controversial issue or to take a public position contrary to government policy.

Status:
Fully implemented.

Ombudsman Observations:

In 1995, subsec. 12(3) was added to the ***Child, Youth and Family Advocacy Act*** which reads:

(3) *The advocate may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the advocate's functions or to a particular case investigated under this* ***Act,*** *if the advocate considers it necessary to do so.*

c. Remuneration of the Advocate

Gove Recommendation 93: The Advocate should be remunerated on a basis consistent with the other Officers of the Legislature.

Original Rationale:
Under then para. 14(1)(a) of the ***Child, Youth and Family Advocacy Act*** the Advocate was to be paid a salary equal to the maximum salary paid to the most senior assistant deputy minister, whereas all other full-time Officers of the Legislature receive a salary equal to that paid the Chief Judge of the BC Provincial Court.

Status:
Fully implemented.

Ombudsman Observations:

In 1995 the ***Child, Youth and Family Advocacy Act*** was amended, so that para. 15(1)(a) now reads:

(1) *An advocate appointed under section 3(1) or 14(1) is entitled*
(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia. . .

This amendment brings the way in which the Advocate is paid in line with all other Officers of the Legislature. This principle is important to establish that the Advocate for children is on a par with other Officers.

d. Protection for complainants

Gove Recommendation 94: The *Child, Youth and Family Advocacy Act* should be amended to include a provision similar to s. 15.1 [now s. 16] of the *Ombudsman Act.*

Original Rationale:
The Inquiry heard repeatedly from youth, parents, childcare workers, foster parents, social workers and other professionals about their fear of reprisal if they pursue concerns about a child's safety and well-being with child protection authorities.

Status:
Fully implemented.

Ombudsman Observations:

In 1995 s. 11 was added to the ***Child, Youth and Family Advocacy Act,*** which reads:

> *A person must not discharge, suspend, expel, intimidate, coerce, evict or impose any financial or other penalty on, or otherwise discriminate against, another person because the other person complains to the advocate or gives information or otherwise assists in an investigation or other proceeding under this* ***Act****.*

2. Easy access to independent advocacy

Gove Recommendation 40: Children who are affected by administrative decisions need easy access to independent advocacy, especially when their interests and the interests of their parents or other caregivers differ.

Original Rationale:
Persons affected by administrative decisions should be advised of the existence of the Child, Youth and Family Advocate and of how to access the Advocate's services.

Status:
Committed; work in progress.

Ombudsman Observations:

The Child, Youth and Family Advocate has indicated that an advocate for children and youth will be provided during the Ministry's internal complaints resolution process. Children, youth and families are informed of their right to an advocate in the Ministry's new "Complaint Resolution Process" brochure that outlines what an advocate is and how to contact her or his office. The Child, Youth and Family Advocate has also assumed responsibility for providing an advocate during Children's Commission investigations and Tribunal Division hearings. The Child, Youth and Family Advocate limits the provision of an advocate if there is another source of advocacy available and in place. (See also pp. 20 - 22 of this Report).

Ombudsman Finding and Recommendations #32:

I find that the Ministry has taken steps to begin the process of ensuring access to advocacy for children and youth.

I recommend that government be guided in implementing this recommendation by Article 12 of the *UN Convention on the Rights of the Child* that states:

1. ***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.***
2. ***For this purpose, the child shall in particular be provided 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.

It is important to note that this obligation has been incorporated into and codified for children in care of the Ministry in paragraphs 70(1)(b), (c), (n) and (o) of the *CF&CSA* that state:

(70)(b) to be informed about their plans for care;
(c) to be consulted and to express their views, according to their abilities, about significant decisions affecting them;

(n) to be informed about and to be assisted in contacting the Child, Youth and Family Advocate;
(o) to be informed of their rights under this Act and the procedures available for enforcing their rights.

I recommend, therefore, that the Ministry fulfill this recommendation and its obligation under the *CF&CSA*, particularly in para. 70(1)(n), by developing and making public a plan of how children in care of the Ministry can gain easy access to independent advocacy.

For children not in care and to whom s. 70 does not apply, it is for the Child, Youth and Family Advocate and others to pursue ways to meet Judge Gove Recommendation 40.

F. SELF-REGULATION

1. Social workers

Gove Recommendation 44: The province should assign primary responsibility for the professional integrity of social workers to the profession's regulatory body.

Gove Recommendation 45: Social workers should be regulated by a self-governing professional body, the directors of which should include approximately one-third lay members.

Gove Recommendation 46: The professional body should:

a. have a legislative mandate,
b. be given authority over *all* social workers,
c. have the authority to set professionally determined qualifications that are a prerequisite to entry into the profession, which may include requirements for recruit training and probationary practice,
d. reserve, for those who have these professionally determined qualifications, the title "social worker," which describes their profession, and the professional body must have the power to define a scope of practice and to permit only those who are qualified to engage in that practice,
e. have the authority to set standards of practice that will enhance the quality of practice and reduce incompetent, impaired or unethical practice,
f. have the authority to receive and investigate complaints,
g. be empowered to adjudicate allegations of unethical or incompetent practice, and to take remedial or disciplinary action to protect the public and the profession's reputation.

Gove Recommendation 47: To achieve recommendations 44 to 46, the province should broaden the mandate of the Health Professions Council to include social services, permitting the creation of a professional college for social workers.

Gove Recommendation 48: Other child welfare service providers who are currently unregulated or inadequately regulated should be brought under a regulatory framework similar to that recommended for social workers.

Original Rationale:
The Inquiry found that about half of MSS social workers did not have the academic qualifications necessary for registration with the Board of Registration, and that many of those who had a BSW declined to register, relying on the exemption in the ***Social***

Status:
Not implemented.

Workers Act applicable to government employees. As a result, only about 20% of the 1,250 social workers employed or contracted to MSS were subject to professional regulation. Judge Gove concluded that it was not satisfactory to leave the issue of professional integrity either to employers or funders of child welfare services, and that the existing Board of Registration of Social Workers should be transformed into a full self-governing College of Social Workers.

Ombudsman Observations:

In March 1995 the Board of Registration of Social Workers and the BC Association of Social Workers made a joint submission to MSS that the mandate of the Health Professions Council be broadened to include social services, and that a College of Social Workers be established under the ***Health Professions Act***. Judge Gove's Recommendations built on that previously made submission.

In 1996 MSS funded a Working Group, including representation from BRSW, BCASW, BCGEU and MSS to develop a detailed plan for a college of social workers under the ***Health Professions Act***. According to the BRSW and BCASW, the BCGEU withdrew from participation in the project following a dispute about staff for the Working Group. In April 1997 the Working Group delivered its report to the Ministry. The report recommended that no one be permitted to practise social work unless they were registered with a new College of Social Workers, established under the ***Health Professions Act***. To be eligible for registration, a person must meet one of three prerequisites:

- *A BSW degree at a minimum:* Current Ministry and contract sector employees without a BSW would be given a grace period, and an interim license in order to complete the concentrated BSW program;
- *Alternative credentialing requirements*: An applicant without a BSW may qualify for registration based on a challenge examination, credit for other academic credentials, credit for work experience or agreement to limit his or her areas of practice; or
- *Grandparenting:* Available to applicants who have practised in BC in a capacity substantially equivalent to a registrant at any time during the immediately preceding two years, and who pass an examination testing for competence.

The Ministry's Working Group also recommended requiring 80 hours of mandatory professional development within a 24-month period.

There is no indication to date that the government is going to proceed with the Health Professions Council model by expanding its mandate. The province of Alberta has apparently chosen this route. There has been some discussion about creating a Social Services Professions Council instead of expanding the mandate of the Health Professions Council. If it had a mandate analogous to that of the Health Professions Council, the BRSW and BCASW would be content. There is also some ongoing policy discussion of in-house regulation of child protection social workers.

The Ministry's approach appears to be that child protection employees provide a broad range of services and that the key issue is determining what competencies are necessary to perform them. A BSW does not, in itself, ensure competency, and additional new employee training is required even for BSW graduates. In the Ministry's view, other academic training may provide an equally valid threshold qualification.

Ombudsman Finding and Recommendation #33:

I find that these Gove Recommendations have not been implemented.

I recommend that the Ministry act on these recommendations but in an integrated and inclusive manner. The model adopted, in my opinion, regardless of whether it is one or two separate Councils, must give recognition to the importance of the work done by those who serve children. Some may argue that moving in this direction will create bureaucracy and formality where none is needed. I believe that children, particularly those at risk and in need, are entitled to all of the safeguards that are the likely outcomes of professional licensing, standards and regulation. Competence in caring for children's safety and well-being is dependent on workers having an appropriate educational background, proper on-the-job training and testing for that competence. Registration with a self-governing professional body that has a legislative duty to monitor its members works to ensure individual professional accountability. Such accountability is an essential component of a model that seeks to ensure the safety and well-being of children and youth.

The new model should include contract sector employees, as we cannot expect private sector employers to set their own standards. Also, we ought to avoid disparity in the standards for those working with children in the public and contract sectors, respectively.

G. SCHOOLS OF SOCIAL WORK

Gove Recommendation 57: The schools of social work, in consultation with the ministry, should review social work curricula to ensure that there is adequate attention given to children's issues in general, and to child welfare in particular, including:

a. developing more core courses in child development and child welfare and a greater emphasis in electives on emerging issues of importance to children, such as Fetal Alcohol Syndrome, children's rights and child advocacy,

b. counselling students to take optional child welfare practice and policy courses and guiding them to field placements in child welfare settings,

c. promoting access to distance education for child welfare workers in remote communities, including aboriginal people, and

d. advancing training opportunities for district supervisors in clinical and administrative supervision in child welfare through MSW and management programs.

Original Rationale:

Judge Gove felt that if MSS took the initiative, it might be able to influence students considering future employment with the Ministry to choose electives that are particularly suitable to the Ministry's job descriptions. This is particularly important because a significant number of BSW graduates work for the Ministry in child protection at some time during their social work careers. In a meeting with the Directors of most schools of social work in BC, Judge Gove found that the schools were willing to support any move by the Ministry to improve the professional qualifications of its workforce.

Status:

Committed; work in progress.

Ombudsman Observations:

The University of British Columbia and the University of Victoria have faculty advisors who discuss with new students the courses they should take if they are planning to practise in the child protection area. The University of British Columbia has a one-year concentrated BSW program for those with considerable field experience.

The School of Social Work at the University of Victoria has added core courses on law and child welfare, and on First Nations history and culture. The school has added elective courses on substance misuse, on child welfare practice (including risk assessment and advocacy for children) and on community development (including multidisciplinary practice).

The University of Victoria is the only BC school of social work that has a distance education program. Of the 400 applications it receives each year, 50 are accepted for the campus program, and 120 for the distance education program. Students in the latter program attend either satellite programs at Terrace or Merritt, or work at home and come onto campus for a few weeks of the course.

The Ministry should urge universities and colleges to consider the Prior Learning Assessment and Recognition initiatives that credit relevant experience towards the granting of a professional degree.

The University of Victoria, School of Social Work created a one-year BSW program specifically aimed at Ministry child protection workers. The Ombudsman is investigating a complaint that the Ministry has been unfair in its dealings with the School regarding this program. In order to ensure that this report will not prejudice the outcome of that investigation, the specific circumstances of the School of Social Work at the University of Victoria will not be dealt with in this Report.

Ombudsman Finding and Recommendation #34:

I find that some steps have been taken to address this issue, but that there is still more work to be done in order to fully satisfy the intent of Judge Gove's Recommendation.

Therefore, I recommend that the Ministry consult with universities and colleges to explore the ways in which opportunities can be provided to existing child welfare staff of the Ministry who do not have a social work or equivalent degree to enable them to obtain a professional upgrade with the appropriate faculties at universities and colleges.

Summary of Recommendations

Recommendation #1:

I find that this Gove Recommendation has not been fully implemented, although the Ministry has indicated an intention to implement.

I recommend that the Ministry extend beyond the pilot project model to enable all communities to put forward their own program proposals to the Ministry that will focus on prevention, well-being and outcomes for all children from birth. While it remains the Ministry's prerogative to approve a program, the invitation ought to be extended to all communities.

Recommendation #2:

I am satisfied that the decision regarding Family Court Counsellors is reasonable and that there should be closure on this part of Gove's Recommendation.

There were two exceptions to Gove's Recommendation about programs from the Ministry of Social Services being transferred, including some income assistance services for families with children and youth:

1) **Child in the Home of a Relative (CIHR) is a program that continues to be provided by the Ministry of Human Resources. Proclamation of s. 8 of the *CF&CSA* will transfer responsibility to the Ministry. Section 8 reads as follows:**

   8(1) A Director may make a written agreement with a person who (a) has established a relationship with a child or has a cultural or traditional responsibility toward a child, and (b) is given care of the child by the child's parent.
   (2) The agreement may provide for the Director to contribute to the child's support while the child is in the person's care.

2) **The Ombudsman has reported in previous annual reports on the problems encountered by young people in need of supports to live away from their families. Many of these youth apply for income support to Income Assistance programs. These programs were designed with adult clients in mind and do not allow the**

circumstances of young people in transition to be considered when determining eligibility for assistance. Nor do adult income support programs meet the needs of these youth.

Section 9 of the *CF&CSA* would enable youth to make agreements particular to their circumstances when they are in need of support. Section 9 of the *CF&CSA* has not yet been proclaimed. It reads as follows:

9 (1) A Director may make a written agreement with a youth who needs assistance and who (a) cannot, in the opinion of the Director, be re-established in the youth's family, or (b) has no parent or other person willing or able to assist the youth.

(2) The agreement may provide for residential, education and other services to assist the youth.

(3) The agreement must include a description of the services to be provided by the Director and the goals to be met by the youth.

(4) Before making the agreement, the Director must (a) consider whether the agreement is in the youth's best interests, and (b) recommend that the youth seek advice from an independent third party.

(5) The initial term of the agreement must not exceed 6 months, but the agreement may be renewed for terms of up to 6 months each.

(6) No agreement under this section continues beyond the youth's 19th birthday.

(7) For the purposes of this section, "youth" includes a person who (a) is under 16 years of age, and (b) is married or is a parent or expectant parent.

I find that income support programs for youth have not been transferred from the Ministry of Human Resources to the Ministry for Children and Families.

In the case of s. 8, government must decide whether CIHR is a program for the direct benefit of children or an income supplement for relatives. If a determination is made that it is the former, I recommend that government consider proclamation of s. 8.

I recommend that government reconsider enactment and proclamation of s. 9 of the *CF&CSA* as soon as is practicable.

With respect to two programs that were transferred that went beyond Recommendation 107, services to adults with mental handicaps from Social Services and drug and alcohol services to adults from the Ministry of Health, concerns were raised during this investigation about the appropriateness of these transfers. I am tracking these concerns as Ombudsman initiated investigations that relate to adults separate and apart from this report since the complaints involve services to adults.

Recommendation #3:

I find that this recommendation has not been implemented, but I am satisfied that there can be closure on this recommendation by Judge Gove.

I recommend that the Ministry, working with the Ministry of the Attorney General, strike a committee to explore *all* of the reasons for delays in court decisions regarding children and youth, and to be guided by subsec. 2(g) of the *CF&CSA* in their deliberations. The well-being of a child must be paramount and cannot be left in limbo because of the interests of third parties. The Committee should consider whether legislative change is required to assist the courts.

Recommendations #4 and #5:

The Ministry has not followed Gove Recommendation 75. I find that the Gove Recommendation recognizes the importance of children's rights to express their views. I am concerned, however, that two existing statutory provisions fall short of the principles of administrative fairness and those contained in Article 12 of the *UN Convention on the Rights of the Child*.

I therefore recommend that government reconsider the following enactments:

1. **Subsection 70(3) of the *CF&CSA* be repealed to ensure that para. 70(1)(c) applies to all children in the care or custody of the Ministry including those in places of confinement. This recommendation is critical to ensure that particularly vulnerable children in care who may be in places of confinement for treatment or rehabilitation have the right to be heard and to access the Ombudsman and the Advocate. There is no reason in**

Recommendations #12 and 13:

I find that the best interests of the child and the statutory duty imposed by s. 2 regarding well-being and safety can only be met if no other interest is paramount. It is important to respect and honour the work of foster parents and other caregivers.

I recommend in the short term that the Director give 72 hours' notice as a matter of practice whenever feasible, out of respect for the caregiver and as a matter of fair administrative process.

I recommend in the long term that a statutory provision for 72 hours' notice be considered but only if the provision is clearly and unequivocally subject to s. 2 of the *CF&CSA*. I further recommend that the notice provisions be included in the guardianship standards of practice being developed by the Director.

Recommendation #14:

I find that the recommendation has not been implemented. Given that the provincial court decision *In re B.D.* addresses the concerns regarding s. 65, I am satisfied that this aspect of Recommendation 84 has been achieved.

I recommend with respect to s. 96, that it be reviewed by the Ministry to determine if the section permits the Director access to records held by private bodies.

Recommendation #15:

I find that Gove Recommendation 116(a) was fully and promptly implemented.

Judge Gove's Recommendations 55 and 56 are being considered by the Ministry as a work in progress. As a result of this investigation, I make the following observations.

While Judge Gove focused primarily on appropriate qualifications for child protection social workers, the landscape has changed with the creation of the new Ministry, which has brought together staff from numerous professional disciplines. In the two years since Judge Gove reported, there has been considerable professional discussion of the

essential competencies required for working with children and their families and there is today, because of the Ministry's experience, a greater understanding of the diversity of training and skills that the Ministry may draw upon.

The Ministry's ultimate responsibility is to ensure that staff and contract sector employees working with children and their families are competent to perform the tasks expected of them. There are, in my view, three elements to competency: academic qualifications, new employee training and entry-level testing.

I agree that all social workers should have a BSW or MSW degree in order to use the title and should be registered with a self-regulating body of social workers. I do not believe, however, that all child protection workers need to be social workers. All child protection workers must have a degree in social work (as recommended by Judge Gove) or an equivalent degree that must also be a condition of membership in the appropriate self-regulating professional body.

Most important, all child protection workers who have a social work or equivalent degree must be able to demonstrate competence (through a KSA - Knowledge, Skills and Abilities - process) at the time of hiring, after the 20-week orientation training program, and prior to being granted a delegation in child protection work. This testing for competence is particularly important, given that child protection courses are not yet mandatory for a degree in social work.

I recommend, therefore, that the Ministry continue its efforts to professionalize child protection work but place demonstrated competence as the number one, but not the only essential, consideration. Competence in caring for children's safety and well-being is dependent on a combination of an appropriate professional degree, proper training and adequate testing for competence.

Recommendation #16:

The Ministry is committed to these recommendations. Some work has begun on contract restructuring that may result in the Ministry being able to fully address these recommendations.

I recommend that the Ministry undertake a consultation with the Federation of Child and Family Services of BC, as proposed by Gove, without restrictions, focusing on the challenge of how to ensure

professional standards for those working with children and youth in the contract sector. (See p. 106 of this Report.)

Separate and apart from this Report, my Office is in the process of receiving complaints about whether the tendering process coming out of the contract restructuring process has been fair. As this relates to matters beyond the goal of this Report, any investigation report that results will be released separately.

Recommendation #17:

The directive in Recommendation 64 regarding the voluntary program of professional development will not be tracked because an employer cannot enforce a "voluntary" program involving its employees. As the Ministry expands on its commitment to life-long learning, as it has in the Child Protection Division, and fully develops its work plans and training for staff, I am optimistic that staff will engage or continue to engage in self-directed professional development on their own volition.

I therefore recommend that the Ministry continue to provide opportunities to enable staff to engage in professional development.

Recommendation #18:

I find that the Ministry has not taken responsibility for contract sector training, either by doing it itself, paying for it or by setting standards.

I recommend that as part of the contract restructuring currently underway, the Ministry must ensure the inclusion of provisions regarding training that is compulsory and fully funded for all of those working in the contract sector, in accordance with the Recommendation by Judge Gove.

Recommendation #19:

I find that this recommendation has not been implemented. I find it unreasonable to require the Ministry, however, to bear full responsibility for this recommendation. The new *Handbook for Action on Child Abuse and Neglect* will be distributed by the Ministry of Health, which is responsible for distribution to the medical profession.

Given the involvement Matthew had with medical professionals, I recommend that all those with whom the Ministry was to work under Recommendation 61 assume responsibility for ensuring the education of their members about child abuse and neglect and the duty to report.

I urge the Ministry to offer its expertise as a resource both to the UBC Faculty of Medicine and the College of Physicians and Surgeons of BC.

Recommendation #20:

I find the recommendations have not been fully implemented.

I recommend that the Ministry continue its work with the Ministry of the Attorney General and in particular:

- **the Ministry of the Attorney General circulate the new *Handbook for Action on Child Abuse and Neglect* to all municipal police forces and to all RCMP detachments in the Province; and**
- **the Attorney General communicate in writing to the BC Association of Chiefs of Police and to the Commanding Officer of the RCMP, "E" Division, the importance of training recruits (and, in the case of the RCMP, transfers to British Columbia) about the *Handbook* and the protocols contained in it.**

Recommendation #21:

I find that the Ministry has plans in place to proceed with this recommendation. Some regions have been more successful than others in adopting a multidisciplinary team approach.

I recommend that the Ministry continue to provide this training itself and in partnership with the Justice Institute of BC and others.

Recommendations #22 and #23:

I find that the Gove Recommendation has not been implemented. The two initiatives, however, demonstrate a commitment to rectify the problem underlying the recommendation.

I recommend that the Ministry continue its work on the Accreditation Program and the Standards for Residential Services.

In addition, I recommend that the Ministry work with the Office of the Comptroller General to develop a quality assurance mechanism to include these residential standards as conditions, either as part of the accreditation process or Standards for Residential Services, under the terms of the contracts. These standards would be in all contracts (though the kind of standard may vary depending on the value of the contract or the nature of the resource) with all child welfare resources regardless of the size of the contractor's budget or the number of children served by the contract agency.

Recommendation #24:

I find that these recommendations have not been fully implemented.

In order to ensure these recommendations are fully implemented, I recommend that:

1. **Clinical Supervisors be given priority in all opportunities for concentrated degree programs in social work and equivalencies;**
2. **The Ministry support the Director's efforts to provide regular seminars for Clinical Supervisors; and**
3. **The Ministry support the Director's initiative with the PSERC and the BCGEU to create incentives that will fully recognize the nature of the work of Clinical Supervisors.**

Recommendation #25:

I find that the recommendation has not been implemented. The Strategic Plan of the Child Protection Division articulates a clear commitment to life-long learning. The Vision states:

> ***Competent staff delivering the highest quality of child welfare services to British Columbia children and families, engaged in ongoing professional development.***

I recommend that the Ministry:

1. **Provide all staff with regular and personalized professional work plans;**
2. **Provide Clinical Supervisors and team leaders with training in how to do performance assessments in a manner that will be seen as**

constructive, focused, and that will assist the individual to engage in ongoing professional development; and

3. Include in the Clinical Supervisor's own work assessment an evaluation of how conscientious the supervisor has been about conducting employee performance reviews.

Recommendation #26:

With respect to Gove Recommendation 3, I find that the Ministry's proposed pamphlet is an educational tool designed to improve the public's understanding of the duty to report. While the pamphlet may also assist in educating professionals, I find that the Ministry cannot bear full responsibility for this area of education. I am satisfied that there should be closure on this aspect of these recommendations.

I find that the development of the new *BC Handbook for Action on Child Abuse and Neglect* shows a clear commitment to Gove Recommendations 3 and 4. I am seriously concerned, however, about the delay in finalizing and distributing the Handbook to all those working with children, as it is such a key part of the educational program.

I recommend that the Ministry give priority to the immediate release and distribution of the Handbook.

Recommendation #27:

The Ministry has been working on a variety of initiatives, aimed at addressing Judge Gove's concerns: the Risk Assessment Model, regional child protection consultants, investigative interviewing training and the new Standards for Child Protection. Sound structural elements are being put into place. What is more difficult to assess is the actual quality of decision making at the street level, based on sound child protection training and the exercise of professional judgment. I am optimistic that the quality of decision making is improving, but that much more needs to be done in training and supervision.

I recommend that the Ministry pursue these initiatives with vigour, and include in its annual review required by the Standards, an assessment and evaluation of the quality of decision making.

Recommendation #28:

I find that the Ministry is committed to these recommendations as demonstrated by the policy framework governing case planning practice.

I recommend that the Ministry evaluate the effectiveness of this policy framework to ensure that:

- **a plan is based on the assessed needs of a child;**
- **a plan is child centered;**
- **professional assessment of the safety and well-being of the child informs the plan;**
- **a plan is resourced appropriately by services; and**
- **a plan is monitored and evaluated regularly by child protection social workers.**

Measuring for the effectiveness of case planning practice, while ongoing as part of quality assurance, should be documented and made available.

(See pp. 120 - 122 of this Report regarding the role of the Children's Commissioner.)

Recommendation #29:

I find that government has not fully implemented these recommendations. I recommend that the Ministry move ahead with this reform by supporting its regions to the extent they are able to operationalize these recommendations.

Recommendation #30:

The recommendation to do an automatic review of every continuing care order has not been implemented.

I recommend that the Children's Commissioner follow through with her plans, as they indicate a clear intention to follow this recommendation.

I am satisfied that there should be closure on the portion of the Recommendation calling for the Care Order to be referred back to the Provincial Court.

Recommendation #31:

Re: 36(b):
I find there has been little increase in the numbers of designated services added to the Child, Youth and Family Advocate.

The Children's Commission provides an external review mechanism for all children and youth in receipt of services from the Ministry.

With a view to ensuring an integrated and compatible system of accountability, I recommend that the Child, Youth and Family Advocate have the legislated authority to advocate for all children and youth in receipt of services or in need of services from the Ministry, in line with the mandate of the Children's Commissioner. The Child, Youth and Family Advocate reported in her Annual Report (1996) to the Legislature that all these services should be designated under her *Act*. I agree.

Re: 36(c):
Article 12.2 of the *UN Convention on the Rights of the Child* states:

> ***For this purpose, the child shall in particular be provided 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.***

In criminal proceedings, youth are entitled to counsel that may be provided through the Legal Services Society.

In custody and access matters, the court can recommend the appointment of a lawyer who is the Family Advocate to represent the interests of the child before the court.

In child protection matters, the Ministry is statute bound to represent the interests of the child or youth to the Court through its counsel.

In civil proceedings a child can be represented by counsel through the Office of the Public Trustee.

While more resources may need to be devoted to these existing means by which a child or youth can have legal representation, having the Child, Youth and Family Advocate able to retain counsel for a child or youth may be counterproductive and unnecessary.

I am of the opinion that the "non-legal" kind of advocacy provided through the Child, Youth and Family Advocate ought not to be altered or transformed by the ability to formalize the advocacy through the appointment of a lawyer by the Advocate for a child or youth. This does not mean that the Advocate herself cannot retain counsel to bring matters of importance to children and youth before the courts.

I am satisfied therefore that there should be closure on this aspect of the Gove Recommendation.

Recommendations #32:

I find that the Ministry has taken steps to begin the process of ensuring access to advocacy for children and youth.

I recommend that government be guided in implementing this recommendation by Article 12 of the *UN Convention on the Rights of the Child* that states:

1. ***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.***
2. ***For this purpose, the child shall in particular be provided 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.***

It is important to note that this obligation has been incorporated into and codified for children in care of the Ministry in paragraphs 70(1)(b), (c), (n) and (o) of the *CF&CSA* that state:

(70)(b) to be informed about their plans for care;
(b) ***to be consulted and to express their views, according to their abilities, about significant decisions affecting them;***

(n) to be informed about and to be assisted in contacting the Child, Youth and Family Advocate;
(o) to be informed of their rights under this Act and the procedures available for enforcing their rights.

I recommend, therefore, that the Ministry fulfill this recommendation and its obligation under the *CF&CSA*, particularly in para. 70(1)(n), by developing and making public a plan of how children in care of the Ministry can gain easy access to independent advocacy.

For children not in care and to whom s. 70 does not apply, it is for the Child, Youth and Family Advocate and others to pursue ways to meet Judge Gove Recommendation 40.

Recommendation #33:

I find that these Gove Recommendations have not been implemented.

I recommend that the Ministry act on these recommendations but in an integrated and inclusive manner. The model adopted, in my opinion, regardless of whether it is one or two separate Councils, must give recognition to the importance of the work done by those who serve children. Some may argue that moving in this direction will create bureaucracy and formality where none is needed. I believe that children, particularly those at risk and in need, are entitled to all of the safeguards that are the likely outcomes of professional licensing, standards and regulation. Competence in caring for children's safety and well-being is dependent on workers having an appropriate educational background, proper on-the-job training and testing for that competence. Registration with a self-governing professional body that has a legislative duty to monitor its members works to ensure individual professional accountability. Such accountability is an essential component of a model that seeks to ensure the safety and well-being of children and youth.

The new model should include contract sector employees, as we cannot expect private sector employers to set their own standards. Also, we ought to avoid disparity in the standards for those working with children in the public and contract sectors, respectively.

Recommendation #34:

I find that some steps have been taken to address this issue, but that there is still more work to be done in order to fully satisfy the intent of Judge Gove's Recommendation.

Therefore, I recommend that the Ministry consult with universities and colleges to explore the ways in which opportunities can be provided to existing child welfare staff of the Ministry who do not have a social work or equivalent degree to enable them to obtain a professional upgrade with the appropriate faculties at universities and colleges.

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APPENDIX

Ombud*submission*

The Ombudsman's Submission to the Special Committee to the Legislature into the Gove Inquiry April 24, 1997, by request.

Introduction

In the Report of the Gove Inquiry into Child Protection, Judge Thomas Gove made more than 100 recommendations to government for the total reform of the delivery of public services to children and youth.

***Recommendation 117* states:**

> *If the Ombudsman supports the recommendations contained in this report, the Ombudsman should monitor the Ministry of Social Services' implementation of the interim reforms and the province's development of the proposed new child welfare system, and report to the Legislative Assembly as appropriate.*

***and Recommendation 118* states:**

> *The province should report to the Ombudsman*
> *a) within two months after delivery of this report on its progress respecting the appointment of the Commissioner for Transition to the Ministry for Children and Youth; and*
> *b) within six months after delivery of this report, on its plans for implementation of the other recommendations contained in this report.*

I announced my support for the recommendations in the Report and my commitment to monitor the implementation of these significant reforms. Government responded within the time frame on the appointment of a Transition Commissioner and I have been in receipt of ongoing updates regarding the many changes that are taking place.

Focus of this Report

In this First Report to the Special Committee of the Legislature, the Ombudsman has focused on the outcomes for children and the roles and responsibilities of each of our Offices to respond to concerns about services with respect to eleven key recommendations from the Gove Inquiry Report.

These recommendations are, in numerical order, as follows:

***Recommendation 39, 41, and 42* state:**

39. *Children, parents and caregivers who are affected by administrative decisions about child welfare service delivery*

a) need consistent, accessible complaints procedures and recognized bodies to review those decisions, and

b) need to be informed of their right to a review of the process involved and of their right to advocacy.

41. *Each district office should establish a fair process for receiving, investigating and responding to complaints about the delivery of child welfare services.*

42. *Children, parents and other caregivers who are not satisfied with a district office's review of an administrative decision should have realistic access to an independent complaints investigator, who would have a mandate to resolve disputes without recourse to the Child Welfare Review Board.*

***Recommendations 49, 50, 51, 52, 53, and 54*:**

49. *The province should establish, by legislation, the office of an independent Children's Commissioner who would be appointed by Order in Council for a fixed term.*

50. *The Children's Commissioner should have responsibility for:*

a) ensuring that each district office establishes a fair process for receiving, investigating and responding to complaints about the delivery of child welfare services,

b) appointing independent complaints investigators,

c) reviewing annually every continuing-care order to ensure that children do not "drift" through the child welfare system, and

d) reviewing children's deaths and serious injuries in accordance with recommendations 51 to 54.

51. *The Children's Commissioner should be given responsibility for receiving reports of deaths and serious injuries of all children and youth who are in the care of the province or who are receiving child welfare services. The Commissioner should:*

a) in the case of any death or serious injury which the Children's Commissioner determines to be suspicious or unusual, refer the case to a judge of the

Provincial Court of British Columbia for whatever form of investigation the judge considers necessary, and

b) in every other case, decide what form of review or investigation is appropriate, assign the case and monitor the review or investigation. The Children's Commissioner should have the authority, at any time, to re-assign a review of investigation.

52. *Death and serious injury reviews should proceed promptly and should be coordinated with other investigations or proceedings. They should not be prematurely terminated, and should not be postponed except for good reason. Review reports may be supplemented by qualified individuals, but not altered by anyone other than the author.*

53. *The Children's Commissioner should monitor adoption of recommendations contained in a death or serious injury review report, and should comment publicly if the child welfare system does not respond adequately to a death or serious injury review.*

54. *The provincial ministry responsible for child welfare must ensure that findings from death and injury reviews lead to improved service delivery, and that patterns and trends identified from reviews and other epidemiological sources lead to reforms in provincial practice standards, qualifications, training and service design.*

***Recommendations 106 and 107* state:**

106. *Provincial responsibility for all child welfare services, currently scattered through numerous ministries, should be brought together into a new Ministry for Children and Youth.*

107. *Provincial responsibilities which should be brought together include:*

From the Ministry of Social Services:

- *family and children's services, including child protection, family support, guardianship, and adoption,*
- *SPMH (Services to People with Mental Handicaps) community support services for children with mental disabilities, programs for children with special needs, daycare subsidies and the Community Projects Funding Program; and*
- *some income assistance services for families with children and for youth.*

From the Ministry of Attorney General:

- *youth probation and related community justice services,*
- *youth containment centres; and*
- *family court counseling.*

From the Ministry of Education:

- *special needs educational services; and*
- *school-based child and youth care workers.*

From the Ministry of Health:

- *alcohol and drug treatment services for children and youth,*
- *public health nursing services relating to children and youth,*
- *forensic psychiatric services related to children and youth, (i.e. Maples, Family Court Centre, Youth Court Services)*
- *child and youth mental health services; and*
- *infant and child development programs.*

From the Ministry of Women's Equality:

- *child care (daycare).*

The Ministry for Children and Youth could, after appropriate consultation, and assuming that it served the needs of children and youth, also assume responsibility for:

- *community care facilities licensing for childcare and children's resources*
- *transition houses (Ministry of Women's Equality); and*
- *public trustee functions on behalf of children and youth (Ministry of Attorney General).*

A Ministry for Children

There has been considerable discussion about the many changes that government has implemented since the Gove Inquiry Report. Let's begin with the recommendations that resulted in the Ministry for Children and Families. This is a new paradigm for everyone, and there has been nothing of similar magnitude in our memory.

When the Transition Commissioner reported to the Premier in September 1996 that the transition to an integrated child welfare system could not wait, government responded without delay. No one would suggest that this major transformation in how we provide services to children, youth and their families has been without bumps and glitches.

We must be mindful of the reason why changes are necessary and are being implemented quickly. The reason is children, our children. For the first time in our history children have a Minister at the Cabinet table to give children's services the same importance and voice as highways and forests. There have been at least 20 years of study and research leading to the conclusion that integration of services to children and youth works better for the client than our traditional fragmented, multi-ministry approach. The 1975 Berger Report of the Royal Commission on Family and Children's Law, and the Ombudsman's 1990 Public Report No. 22 ***"Public Services to Children, Youth and Their Families in British Columbia,"*** culminating with the Gove Inquiry have all concluded that an integrated system of service delivery best serves the needs of children and youth.

Some have argued that these changes are too many, too fast. Others believe that they are too few, too slow. The magnitude of change has had impact on many individuals and has created stresses for staff who are trying to work within a shifting environment. I am sensitive to the impact on the many staff who serve children and youth and confident that despite disruptions, these staff will continue with their commitment to integrated services for their clients.

As Ombudsman I am satisfied that the initiatives undertaken to date by government meet the expectations of Gove's recommendations as well as the recommendations from Ombudsman reports, and other reports calling for an integrated system of service delivery for children and youth.

An Internal Complaints Process for the Ministry for Children and Families

Judge Gove said,

> *"in the absence of a clearly articulated complaints process, the public and clients do not know how to lodge complaints, and ministry staff do not know how to respond to them. Without a ministry-wide complaints mechanism, the ministry fails to benefit from an important potential source of public input."* (at p. 101)

Gove identified the need for an adequate internal complaints mechanism as essential to service quality.

Quality assurance requires internal reviews, including audit. In the former Ministry of Social Services there were internal audit and review mechanisms but they were for the ministry, not for the clients. ***Recommendations 39 and 41*** address the need for an accessible mechanism within the Ministry for Children and Families to hear and resolve complaints about services. The ***Child, Family and Community Service Act*** includes provisions for an internal complaints process.

The Ministry for Children and Families is working to ensure these internal complaints processes are in place. Each region must have one person designated with the responsibility of ensuring complaint resolution processes are functioning in that region. This regional person would be someone who was not involved in the original decision about which the complaint is focused. The goal is to resolve complaints with the involvement of parties affected and of those who are most familiar with the client. The outcome for children and their families is knowing that they are entitled to challenge a decision about the services provided or denied, and that they are informed and assisted to do so in a timely way.

I am pleased that the Ministry for Children and Families has demonstrated its commitment to meet the requirement to have a complaints process accessible by clients. My interest, as Ombudsman, is to be satisfied that an authority within my jurisdiction provides an opportunity to its clients for a fair review of a complaint. My experiences as an Ombudsman confirm the knowledge that complaints about decisions or actions are best resolved at the local level closest to the people affected. This provides the opportunity to resolve issues in a timely way involving the people most familiar with the circumstances of the child or youth.

The Role of the Children's Commission

In addition to the need to try to resolve issues locally there is a need for different kinds of review. I am now referring to Recommendations 49 through 54. When the internal complaints process has been exhausted in an effort to resolve a matter, without success, it is appropriate and fair that the complainant have an opportunity to have the merits of the matter investigated by an external agency. Then there are special problems such as the deaths of children, and critical injuries to children in care of the state, which must be reviewed outside the child-serving ministry.

There has been much attention focused on review of deaths since the Gove Inquiry Report into the death of Matthew Vaudreuil. The importance of a provincial overview in the review of deaths of children is not debatable. In order to learn what causes the

deaths of children, and how we might prevent such tragedies, we must have the ability to review their deaths, collect data and assess and analyze the information we obtain.

The Children's Commission is the appropriate place for these reviews to be done. The Children's Commissioner is independent from the Ministry for Children and Families, which is now the ministry responsible for public services, with the exception of public education services, for children and youth. Appropriately, therefore, the Children's Commissioner reports to Cabinet, through the Attorney General.

Among the outcomes for children in the centralized function of the Children's Commission is that we will have a clear indication of trends and factors that contribute to the deaths of our children and may be able to prevent some deaths in the future. While that may seem self-evident and simple, prior to the reviews by the Children's Commissioner this province lacked the ability to have one central agency compiling and analyzing information and data about all children's deaths and critical incidents in the province.

My understanding is that critical injuries to children are more problematic as there is no single province-wide data base to record these incidents. I have been advised that there is an initiative underway involving the Ministry for Children and Families and hospital emergency wards to develop a shared data base to identify children who are admitted to emergencies wards with injuries.

I have met with the Children's Commissioner and continue to monitor the progress of that office in meeting the expectations of the recommendations regarding the review of children's deaths and critical injuries. I am sure that the Children's Commissioner will monitor the reporting by emergency ward staff and report on the progress of these initiatives taken to coordinate the ability to record and report these incidents.

In addition to reviews of children's death, there are quality of service complaints. I will now outline how I see the present system responding to these concerns:

1. If the complaint is that there is no advocate provided to a child or youth in trying to resolve a matter with the ministry, **the complaint goes to the Child, Youth and Family Advocate.**

   The Children's Advocate should be involved, as appropriate, at any step from the initiation of an internal complaint process through to the investigation by the Children's Commissioner to ensure that the child or youth's voice is heard and considered by those making the decision.

2. If after the internal complaints process has tried to resolve but has not been successful, **the complaint that the ministry's decision is wrong goes to the Children's Commissioner.**

   The Children's Commissioner can review the merits of the ministry's decision and ensure it is in the child's interests. The outcome for children is that if they continue to oppose the decision or action of ministry staff, the merits of the decision can be reviewed or investigated by someone outside the child-serving ministry.

   The Children's Commissioner must be able to investigate the matter from the beginning and determine that the decision made was in the interest of the particular child or youth. The outcome for children is that their needs and interests become the focus of the decision as intended by the Gove Report.

   It is vital that the Children's Commission have highly skilled, and competent independent investigators who function with the goal of seeking informal resolutions at any stage in the investigation. When a complaint goes to the Children's Commission, it is critical that the matter is truly investigated by her investigators. These investigators may be able to resolve the issue by going into the community and meeting with all parties involved. Investigators may be able to offer mediation to resolve a complaint.

   If a complaint is not resolved, the Children's Commissioner can use the power of the ***Inquiry Act*** to conduct a more thorough hearing and decide on the merits of the case. A Commissioner, under the ***Inquiry Act,*** has flexibility to receive information in many different ways. She can subpoena witnesses and hold formal hearings. She can hold a hearing by speaking to someone over the telephone. It is anticipated that when legislation is put into place to govern the work of her office, it will provide her with the appropriate statutory powers.

3. **If the complaint was that the process by which the ministry or Children's Commissioner or any child-serving public agency responded to the child or youth was not fair, it goes to the Ombudsman.**

   The Children's Commissioner does not consider the process by which a decision was made as the Ombudsman continues to fulfill the mandate of ensuring administrative fairness for all parties affected. If a complainant has issue with the process by which the decision was made, that someone treated the complainant unfairly, then the complaint goes directly from the internal regional complaints process to the Ombudsman. Children and their advocates therefore have access to

a full range of review, ensuring that their voices are heard and considered, that their rights are respected and that they are treated fairly.

The Ombudsman continues in the oversight role to ensure that both the ministry and the Children's Commissioner are fair in their efforts to resolve complaints.

4. Currently there also exists another independent, but limited, review of complaints from clients of the ministry. Under the ***Child Family & Community Service Act***, **a violation of the rights detailed in s.70 of that statute can be directed to the Child and Family Review Board (CFRB)** for a hearing. Gove made recommendations regarding the CFRB and it may be that the legislation governing the role of the Children's Commissioner, which is anticipated soon, will address those concerns.

   If the CFRB concludes that the right has been violated, it can direct the Director of Child Protection to cease the violation. Section 70 of the ***Child Family & Community Service Act*** does not address a child's right to choose where he or she wants to live, a fundamental issue for children removed from their parents. Children in care must have access to review and participation in decisions to change their placements, with the ongoing assistance of an advocate. The Children's Commission will be able to hear complaints about placement that were not resolved by the internal complaints process. The Commissioner ought not to replicate the quasi judicial process established by the CFRB.

   It may be that the current structure and mandate of the CFRB is an impediment to the function of the Children's Commission. The CFRB functions by provisions of the ***Child Family & Community Service Act*** and the Children's Commissioner, now serving as the Chairperson of the CFRB, obtains her authority from the ***Inquiry Act***. The Children's Commissioner has decision-making powers under the ***Inquiry Act***. Gove did not believe the Chairperson of the existing CFRB should have decision-making powers. If CFRB were a recommending body, then it would have some merit because decisions regarding the day-to-day care of a child would still be made at a local level by those who know the child. These decisions cannot be made at a provincial level. The Panel of Experts that the CFRB can rely upon could be regional advisors to assist line staff make decisions in the interests of children.

Comments and Observations

Gove intended that the Children's Commissioner be responsible to ensure that there is a process in place within the Ministry for Children and Families that will address complaints. The Children's Commissioner must be vigilant in remaining separate from

the Ministry for Children and Families, and ought not to be seen to be designing the ministry's decision or complaints processes. The Children's Commissioner needs to ensure an adequate complaints procedure is in place in every region and that advocates are welcomed and included. I believe that the Commissioner shares this expectation.

In addition to responding to complaints, Gove envisioned that the Children's Commission would address the problem of children in care drifting through the system. My understanding is that the Children's Commission would not implement plans of care but would monitor the adherence of the Ministry for Children and Families to standards for managing plans of care.

The Children's Commissioner must have the ability to report publicly through her annual report. The Children's Commissioner legislation needs to ensure discretion and ability to reconsider decisions if new information comes to light.

You may ask why is it necessary to add another role in responding to the needs of children given that we have a Child, Youth and Family Advocate, and an Ombudsman, which are already established. There are limitations to each office from the child's point of view.

Gove identified some limitations to the existing role of the Child, Youth and Family Advocate, which the Advocate will address. The Child, Youth and Family Advocate has restricted jurisdiction, does not review decisions but advocates for the child or youth, and has no authority to require change. Her statute requires her to provide information and advice to government about services to children but does not empower her to direct the provision of services. The Advocate's role is to ensure that the child has an advocate.

The Ombudsman cannot make expert opinion about child welfare but rather about administrative fairness. The Children's Commissioner can give expert opinion about a decision, can be competent in child welfare matters. The Ombudsman has no authority to direct change. If the Children's Commissioner has the power to order rather than the power to recommend, it will not have to rely on public argument to convince authorities to implement a recommendation. The process of making recommendations that must go public for purposes of persuasion is not a child-centered process. To serve the needs of children, the Children's Commissioner must have the ability to make a decision that is in the child's interests.

I do not believe that Gove envisioned the Children's Commissioner to be a mini-Children's Ombudsman as this would have taken it outside of government - clearly not an intended result. The Children's Commissioner is to ensure that children's rights are

respected, to ensure that the system protects the children from harm, and that decisions are in the child's interests. The Children's Commissioner does not review process or administrative fairness. Unlike the Ombudsman, who is an Officer of the Legislature, the Children's Commissioner is accountable to Cabinet as appointed by Order In Council (OIC), reporting through the Attorney General. The Children's Commission and Commissioner are within the jurisdiction of the Ombudsman to ensure that the Children's Commission is fair in its process. The Ombudsman acts as the safeguard to review the Children's Commissioner. Therefore there is no need for a formal appeal process internal to the Children's Commission.

The Children's Commission is an authority within the jurisdiction of the Ombudsman to review. If the Children's Commissioner were to go beyond her legal mandate or jurisdiction and make an error in law or in fact, the complainant would have the option of judicial review or my Office. If the complainant believed that the Children's Commissioner erred or conducted her process unfairly or inappropriately, the Ombudsman could also review these allegations.

This is my First Report on my observations of the implementation of the Gove Inquiry Report recommendations. I believe that government's efforts to date are appropriate and will ultimately result in a better system of service delivery for children, youth and their families. As Ombudsman I am mindful of the needs of children and youth and their entitlement to fair process. As the Office with responsibility for monitoring the implementation of Gove's recommendations I am cognizant of the fact that the needs of children are being addressed and met during this period of transition by those working on the front lines, by those at all levels who are working to ensure that children are receiving the services they need. There are issues still outstanding and I will continue to monitor the status of those issues.

These initiatives will address public confidence that the system is doing the best it can. It is child centered, with focus on the child's well-being. The outcome for children and youth is that the Children's Commissioner has the power to make informed, competent, timely decisions about the outcome of the complaint. The Advocate continues to ensure that the child's voice is heard and her or his views are considered in this process of decisions affecting services. The Ombudsman continues to serve children as the watchdog to ensure fair administrative practices by all child-serving agencies.

Conclusion

There are some who would consider that there are now too many options for children, youth and their families. I do not agree. Each body now in place has a distinct and

important role to play. What is critical is that each office understand its duties, that its role be clearly articulated in legislation and that any confusion on the part of the public be minimized by each office not usurping another's statutory mandate. In my opinion, choices are important for people, including children, youth and their families. It is incumbent upon each party -- Child and Family Advocate, Children's Commissioner, Ministry of Children and Families, the Child and Family Review Board, the Public Trustee, and the Ombudsman -- to appreciate the role it has been given, make it known to the public and vigorously resist blurring the boundaries between the offices. While each and every office seeks to serve the public it is designed to serve, we all must avoid the temptation to pursue cases not properly ours, regardless of whether our motivation is altruistic or because we are trying to be all things to all people. Fairness for children and youth requires that we respect one another's roles and that we be patently clear about those roles.

My observation is that those working with each office function cooperatively and effectively with each other on a day-to-day basis. The public face that is put on an office is the responsibility of Management and requires leadership, respect, courage and clarity. I am confident that all those who currently hold this responsibility will rise to the challenge in order to be effective in the new model serving children and youth in British Columbia.

Respectfully submitted,

Dulcie McCallum
Ombudsman for the Province of B.C.