

PROTOCOL

between

**YUKON DEPARTMENT OF HEALTH AND SOCIAL
SERVICES**

and

YUKON CHILD AND YOUTH ADVOCATE OFFICE

March 2017



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1. Definitions

The "Act" – unless otherwise stated, refers to the *Child and Youth Advocate Act*.

The "Advocate" – unless otherwise stated, refers to the Yukon Child and Youth Advocate Office, the appointed Advocate or the staff acting on behalf of the Advocate.

The "Department" – unless otherwise stated, refers to the Yukon Department of Health and Social Services.

Designated Services – for purposes of this protocol, Designated Services refers to programs or services for children or youth provided by Health and Social Services.

Systemic issue – is an issue in relation to a Designated Service that raises a substantial question of public interest.

Initial Contact – for purposes of this protocol initial contact refers to the first contact between the Advocate and the Department regarding a new advocacy issue.

2. Introduction

The Advocate and the Department are committed to promoting and supporting meaningful and effective advocacy on behalf of Yukon children and youth receiving or eligible to receive Designated Services. Both parties strive for professional and collaborative working relationships in achieving the best interests of children and youth.

Within their respective legislative mandates, both parties will work to ensure that their organizations achieve the best possible results for Yukon children and youth. This protocol serves to clarify the roles of each organization, and to articulate how they will work together while mutually respecting each role.

3. Legislative Authority

The Child and Youth Advocate is an independent officer of the Legislative Assembly legislated under the *Child and Youth Advocate Act*. Part 1 of the Act defines the Designated Services within the Advocate's mandate, which includes programs or services for children and youth provided directly by a Yukon government department ("Designated Services"). Part 1 also sets out the guiding

principles for administering and interpreting the Act. The Advocate's functions, duties and powers are mandated in Part 3 of the Act.

For the purposes of the Protocol, the Department's legislative mandate includes the *Care Consent Act*, the *Child Care Act*, the *Child and Family Services Act*, the *Children's Law Act*, the *Corrections (Young Offenders) Act*, the *Health Act*, the *Health Care Insurance Plan Act*, the *Mental Health Act*, the *Young Persons Offences Act*, and the *Youth Criminal Justice Act*.

4. Guiding Principles

Interactions between the Advocate and the Department are based on the Guiding Principles outlined in the Act:

- a) the family is the primary source of nurturance, support and advocacy for children and youth;
- b) consistent and loving relationships enable children and youth to form attachments and develop personal resiliency;
- c) culture, traditions, values and beliefs play a vital role in strengthening the identity and resiliency of a child and youth;
- d) every child and youth has strengths that can be enhanced by those working in partnership with them;
- e) relationships based on trust and respect enhance the will to cooperate and resolve issues;
- f) modeling a cooperative and respectful process for resolving issues provides children and youth with an experience of how to resolve issues in a way that fosters resolution and healing;
- g) First Nations have a responsibility for children and youth who are members of their First Nation and a desire to be involved in processes regarding the protection and realization of their member's rights and interests;
- h) the dignity and diversity of children and youth must be respected;
- i) children and youth are active participants in their own development and have an evolving capacity to inform and express their views;

- j) the way a child or youth communicates is not necessarily a reflection of their capacity to understand and make decisions;
- k) communication with a child or youth must be respectful and appropriate to the skills, abilities and developmental maturity of the child or youth; and
- l) a child-centred or youth-centred approach focuses on the interests, needs and rights of the child or youth and recognizes that a child or a youth grows and develops as part of a family, a culture and a nation.

5. *United Nations Convention on Rights of the Child*

The approach of the Advocate and the Department to advocacy is significantly influenced by the *United Nations Convention on the Rights of the Child*, which operates on four guiding principles:

- non-discrimination: treat everyone fairly and with respect;
- right to life, survival, and development: children and youth have a right to the basic things to live, survive and develop;
- best interests of children and youth: always ask yourself: “is the decision I’m making good for kids”; and
- respect the views of children and youth: children and youth need to participate to the fullest extent possible, and have their views considered when decisions are being made that affect them.

6. Advocacy – Individual

Advocacy ensures that the rights, interests, voice and well-being of children and youth are heard, and considered in relation to the provision of certain government services. Because of this, the role of the Advocate is important in advancing the interests of children and youth receiving or eligible to receive Designated Services. The Advocate and the Department are committed to encouraging children and youth to become effective advocates for themselves.

Hearing a child or youth’s voice and considering their views when decisions are being made is important to determine what is in a child or youth’s best interests. Their participation, having regard to maturity and age, enhances effective planning and strengthens the child or youth’s sense of personal accountability and competence, and ultimately promotes successful outcomes.

7. Systemic or Policy Issues

In the course of advocating for an individual, an issue may be identified as systemic in nature when it raises a substantial question of public interest. When the Advocate becomes aware of such an issue, the Advocate may review and provide advice on the issue to the Deputy Minister of the Department. The Advocate will notify the Department before publishing information regarding the issue in the Advocate's Annual Report. The Advocate will ensure that the methodology for carrying out a systemic review is included in the report.

The Advocate will provide the Deputy Minister with information regarding systemic issues at regular meetings (refer to section 14 of this Protocol) and may recommend that the Department conduct an internal review of the issue. When the Advocate brings a systemic issue to the attention of the Deputy Minister the Department will report back on action taken to address the issue.

8. The Advocate's Roles and Responsibilities

The Advocate:

- will work cooperatively with the Department, within the confines of the Act and other relevant legislation;
- will ask questions and seek to understand the reasons behind Department policies, practices, procedures, and decisions, particularly with respect to access to program and services;
- will clarify the advocacy issue and their involvement in resolving the issue;
- will work with the child or youth and other persons involved to ensure that the views of children and youth are heard by the Department and considered when decisions are being made that will affect them;
- may, when requested by a youth or child, parent or other involved person, participate in case planning meetings with children and youth to ensure that their views are heard and considered and that their rights; preferences and interests are upheld; where circumstances permit, the Advocate will notify the Department of their intent to participate;
- will strive to support collaborative solutions with the provider of the Designated Service;

- may request that the Department review advice that is brought forward by the Advocate on behalf of children and youth;
- may request an update on the steps taken by the Department to give effect to the Advocate's advice within a specified timeline. If no steps have been taken, the Advocate will ask the Department to provide reasons for not following the advice;
- will not act as legal counsel for a child or youth. The Advocate will not interfere with or impede the work of another body, tribunal or court established under legislation that has jurisdiction over the Designated Service;
- may, after referral and/or discussion with the Department, choose not to be involved; and
- will notify the program manager of the Designated Service when a file has been resolved;

9. The Department's Roles and Responsibilities

The Department:

- will work cooperatively with the Advocate within the confines of the Act and other relevant legislation and policies;
- will provide the Advocate with the information the Advocate requests and is entitled to receive under the Act, either verbally or in writing;
- will respond to the Advocate's requests for information and will provide the information requested in accordance with the Department's Corporate Procedure IM-PR001, "Information Sharing with the Child and Youth Advocate";
- will provide children or youth with access to the Advocate at the request of the child or youth or other persons with an interest in the child or youth, in order to uphold the participation rights of children and youth at case planning meetings or other decision making processes;
- will ensure that the Advocate is informed of the time and place that a case planning meeting is being held, upon being notified of the Advocate's intention to participate in case planning meetings or other decision making

processes about a particular child or youth who is receiving or eligible for Designated Services;

- will provide children and youth receiving Designated Services, and their families with information about and access to the Advocate's services;
- will encourage communication between the Advocate, children/youth, care givers and employees; and
- will provide the Advocate with a contact list setting out the first point of contact for various Department programs once a year on September 1st.

10. Information Sharing

a) General

Information collection, use and disclosure are governed by Yukon legislation including the *Child and Youth Advocate Act*, the *Access to Information and Protection of Privacy Act*, the *Health Information Privacy and Management Act*, the *Child and Family Services Act* and the *Mental Health Act*. In cases concerning youth justice; collection, use and disclosure of records is governed by the *Youth Criminal Justice Act*, which takes precedence over the *Child and Youth Advocate Act*.

Section 23(1) of the Act gives the Advocate the right to any information that is in the custody or control of the Department, if the information is necessary to enable the Advocate to exercise its power or perform its functions and duties under the Act.

Upon request by the Advocate, and where the Advocate has confirmed in writing that the information requested is, in the opinion of the Advocate, necessary to enable the Advocate to exercise their powers or perform their functions and duties under the Act, the Department will provide information, except where prohibited by the Act, to the Advocate so that the Advocate can perform its function and duties under the Act. This may include information about persons other than the child or youth who is the focus of the inquiry.

If there is any concern as to whether the information requested by the Advocate is information to which the Advocate is entitled under the Act, the Department will internally review the circumstances surrounding the information and request.

b) Initial Contact – Individual

The preferred initial contact between the Advocate's office and the Department is an email followed by a phone call from the Advocate to the applicable program supervisor. The Department will make all reasonable efforts to respond to the e-mail or return the phone call within two business days. If the Advocate has not received a reply within two business days, the Advocate will make a follow-up phone call or email to the same program supervisor. If the Advocate continues to receive no response, the Advocate will contact the applicable program manager.

The Department will provide the information that it is legally entitled to disclose to help the Advocate understand a concern or situation raised, so that the Advocate can assess the child or youth's advocacy needs.

The parties agree that it is preferable that questions, concerns, or issues be addressed at the agreed upon level. The program supervisor will ordinarily be the primary point of contact for initial requests from the Advocate related to individual advocacy. The program director will be the primary point of contact for requests from the Advocate related to program or policy information.

c) Initial Contact – Systemic or Policy Review

When the Advocate conducts a systemic review the Advocate will notify the Deputy Minister. The Advocate will request relevant information from program directors and will report findings to the Deputy Minister. The Department will provide information about the issue and policies to support the review.

d) Requests for Department Documents

Formal Requests from the Advocate for access to record(s) must be in writing, and include:

- a statement that the request is being made under Section 23(1) of the Act and confirmation in writing that the information requested is, in the opinion of the Advocate, necessary to enable the Advocate to exercise their powers or perform its functions and duties under the Act;
- a description of the nature and type of information requested; and
- a timeframe agreed on with the Department detailing when the Advocate requires the information.

The parties acknowledge that the Department is not under any obligation to create records or reports for the Advocate, and the Advocate agrees not to request the creation of records or reports. The parties acknowledge that the Department may, if legally authorized, provide or withhold any additional information beyond the information requested by the Advocate.

e) The Department's Response

When the Department receives a formal request for information from the Advocate, Department staff will:

- ensure that the Advocate's request is made by a properly delegated person;
- inform their managers of the Advocate's requests for information;
- respond to the Advocate within two business days or such other timeframe agreed on by both parties, depending on the urgency of the situation and the complexity of the information request;
- advise the Advocate of any anticipated or unforeseen delays in providing the information;
- make every effort to respond and disclose the requested information in the timeframe agreed on; and
- have discussions with the Advocate about the request in order to provide the necessary information.

f) Cooperative Information Sharing Forums: Building and Maintaining Relationships

The Department and the Advocate recognize the value of holding regular meetings between representatives from each of their offices to discuss matters of mutual interest and how they will work together (e.g. information sharing, perceived trends, issues related to children and youth, new developments).

The Department and the Advocate recognize the value of keeping staff informed of the role of each office, the purpose of the protocol, and the responsibility of each office as it pertains to advocacy for children and youth.

g) Notification to First Nations

Subject to section 14 of the Act, the Advocate must take reasonable efforts to notify a First Nation if the Advocate is taking action or intends to take action on behalf of a child or youth who is a member of a First Nation. Where a child or youth, or parent, or other person authorized to make decisions on behalf of a child or youth, objects then no notification to the First Nation will be provided.

11. Confidentiality

Information received by the Advocate is confidential. The *Access to Information and Protection of Privacy Act* applies to the Advocate, and information received by the Advocate may not be disclosed unless authorized by section 23(4) of the Act or other legislation.

Information provided to the Advocate is subject to the security requirements set out in the *Access to Information and Protection of Privacy Act* and the Advocate's established operational policy on "Access, Protection and Disclosure of Information".

12. Consent to Represent

The informed consent of children and youth is not required before the Advocate may act on their behalf. However, it is good practice and demonstrates the principle of child and youth participation in matters that affect them for the Advocate to meet all children and youth referred to the Advocate, having regard to their age and maturity, and to seek appropriate informed consent, where possible and appropriate, before advocating for them.

13. Dispute Resolution

Where a conflict arises in the interpretation or application of this Protocol or the respective roles of the Child and Youth Advocate Office and the Department which cannot be resolved between the workers involved, the issue will be brought to the attention of the appointed Advocate and the applicable director of the Designated Service to determine appropriate steps for resolution. If it still cannot be resolved fully, the matter will be brought to the attention of the Deputy Minister of the Department for further discussion and resolution.

14. Regular Meetings

- The Advocate and senior managers of the Department, as determined by the Deputy Minister, will meet formally semi-annually and otherwise as needed for the purposes of sharing information regarding trends, statistics, current developments and any other item of mutual interest.
- The Department commits to organizing the semi-annual meetings and ensuring that the appropriate senior managers are invited.
- The Advocate will inform the Deputy Minister of formal systemic issues and emerging trends.
- The Department may inform the Advocate of emerging trends or issues.
- The Advocate will provide educational materials to Department staff to promote access to the Child and Youth Advocate Office by children/youth.
- The Advocate will provide annual training to Department staff on the role of the Child and Youth Advocate Office, implementing children's rights, how the office works with the Government of Yukon, etc.
- The Department commits to providing information and/or orientation sessions on new programs and services for children and youth to the Child and Youth Advocate Office.
- The Advocate makes a commitment to transparency and during the regular meeting will report informally on the year's activities and any issues arising from those activities.

15. Review of Protocol

The Advocate and the Department agree that any issue or concerns arising from this Protocol will be discussed and addressed by the Deputy Minister, Health and Social Services and the Advocate. The Protocol will be reviewed and updated, as agreed upon, once notice to the other party has been given and the Advocate and the Deputy Minister for Health and Social Services have discussed and agreed to changes to the Protocol.

16. Signatures

Paula Lee Byl
A/ Deputy Minister
Department of
Health and Social Services

March 16/17
Date

Anne Kelly
Advocate
Child and Youth Advocate Office

Mar. 16, 2017
Date