



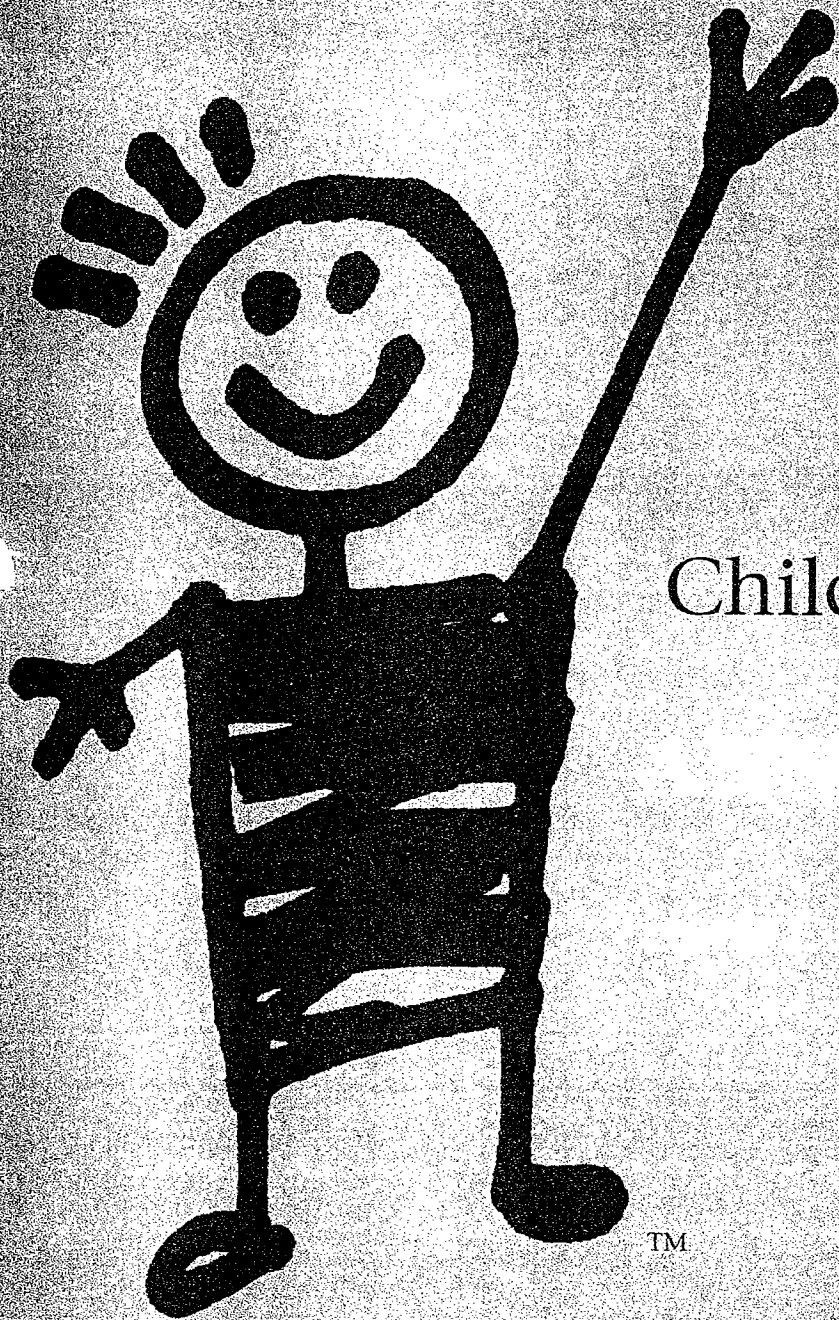
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COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES  
SURROUNDING THE DEATH OF PHOENIX SINCLAIR

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**Commission Disclosure 0219**

unless you  
listen, you  
can't hear  
**ME**<sup>TM</sup>



Children's Advocate

**PROXMI**

TM

**Annual Report  
of the  
Office of the  
Children's Advocate  
of Manitoba**

***April 1, 2004 - February 25, 2005***

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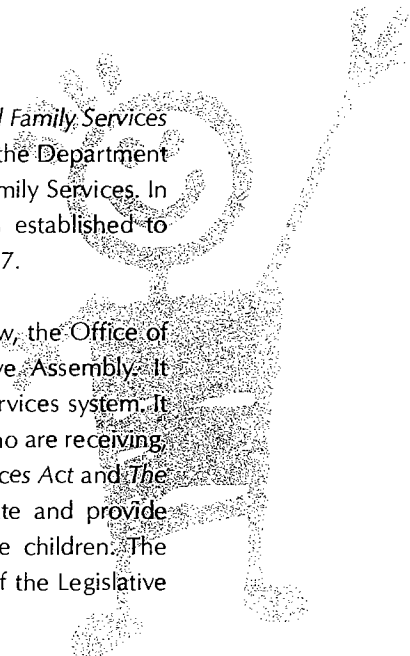


# The History and Role of the Children's Advocate in Manitoba

The Office of the Children's Advocate (OCA) was created under *The Child and Family Services Act* and proclaimed April 1, 1993. The office operated under the umbrella of the Department of Family Services and the Children's Advocate reported to the Minister of Family Services. In 1996, consistent with legislative requirements, an all-party committee was established to conduct a review of the office with public hearings commencing in May 1997.

On March 15, 1999, in response to recommendations arising from the review, the Office of the Children's Advocate became an independent office of the Legislative Assembly. It currently operates in an arm's length relationship with the child and family services system. It exists to represent the rights, interests and viewpoints of children and youth who are receiving, or entitled to receive, services as prescribed under *The Child and Family Services Act* and *The Adoption Act*. The Children's Advocate is empowered to review, investigate and provide recommendations on matters relating to the welfare and interests of these children. The Children's Advocate prepares and submits an annual report to the Speaker of the Legislative Assembly.

On March 29, 1999, the Lieutenant Governor in Council appointed Janet Mirwaldt as the Children's Advocate on the recommendation of the Standing Committee of the Assembly on Privileges and Elections. Ms. Mirwaldt was re-appointed on March 29, 2002. Her second and final term as Children's Advocate will end on March 29, 2005.



## The Importance of Having an Independent Children's Advocate

Advocates challenge the system. They point out current practices, policies or legislation that are not meeting needs and expectations. Advocates work for change ... and change is not always easy for people to accept. Advocacy can create tension, but can improve the system.

Children especially need advocates. They live in a world where adults make decisions about their lives. They have a voice but they have virtually no legal power to make anyone listen to that voice. Our experiences speaking with children and youth in the child and family services system have shown us they often feel they have no say in what happens to them.

Our mission is to animate their voices and ensure their rights, interests and viewpoints are valued, respected and protected. Our advocacy efforts and services are child-centred, family-oriented and anchored in the community. They are delivered in an ethical, culturally sensitive and respectful manner.



you now.

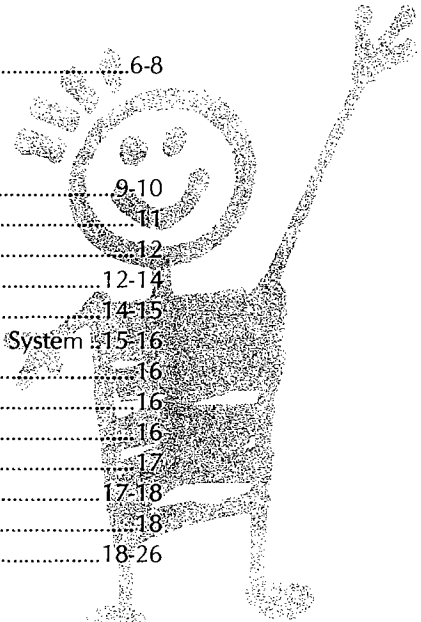
*J., age 7*



you when  
you talk to  
a child  
advocate.

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## A Message from the Children's Advocate

In accordance with Section 8.2 (1)(d) of *The Child and Family Services Act*, I respectfully submit this document as my annual report for the time period beginning April 1, 2004. Under normal circumstances the reporting period for this annual report would have ended on March 31, 2005. Given that my term of office is completed prior to the fiscal year end, statistics have been compiled for the nine-month period ending December 31, 2004. Other non-statistical information has been reported up to February 2005.

This is my final annual report, as my second three-year term as Children's Advocate will end on March 29, 2005. It has been an honour to serve as Manitoba's Children's Advocate. Along with a dedicated staff group and the community-at-large, I have had the rare privilege of helping to shape and mold the Office of the Children's Advocate (OCA) as it began its era of independence from the Department of Family Services in March 1999.

An annual report is typically a reflection of the activities conducted by an office over the reporting year. This report outlines not only the activities we have accomplished over the last year but is a reflection of where we started from in 1999 to where we have evolved in 2005. In our first three reports we reported primarily on our case activities. In the last three reports we have reported on our involvement in systemic issues. I believe that we have been able to accomplish a great deal within a limited resource base and in an environment that has been undergoing massive changes.

In six years I have had the privilege of working with four Ministers of Family Services and Housing, two deputy-ministers and four provincial directors of child and family services. Since 2000 the Aboriginal Justice Inquiry - Child Welfare Initiative (AJI-CWI) process has been actively unfolding. In the coming year we will see the final transfer of responsibility for services for First Nations and Métis children and youth returned to these respective communities. The OCA will now work with the four new child and family service authorities in addition to the Department of Family Services and Housing (DFSH).

Throughout these changes we have strived to be a stable and consistent voice in the system. At the same time we have seen little change in our resources base at the OCA. This has created challenges for the OCA but we have looked at these challenges as opportunities and I believe we have been able to accomplish a great deal in six short years.

It is particularly rewarding to note that many more children and youth now directly access the office when they feel they need help. As well, I believe some of our best efforts were directed at developing and providing public education material and rights based education programs for children and youth. One youth told us after attending a Right Way workshop that he learned not only about his rights but his responsibilities as a member of his community. He said, "What you say does matter. You need to say things to help people. You need to contribute".

Since gaining independence, the OCA has also undergone an evolution in the way we conduct our business and our casework. We have created an information management database system whereby we can enter case information into the system, compile the information and accurately track systemic issues and concerns. We can use this information to make recommendations based on factual and statistical information gathered by our office, and based upon the actual experiences of the children, youth and families involved with the child and family services system.

We have worked hard to create better working relationships with agencies, child-serving groups and communities. We have tried to move away from an adversarial approach, as we have found that we get the best results by concentrating our discussions on the best interests of the child or youth involved in our cases. Most often we find that while we all have different roles, we also have one common goal – we all want what is best for the young person in care.

Over these last six years we have seen relations with various agencies and departmental staff evolve to the point that our office has been invited to provide input on some of the initiatives and activities being undertaken in child and family services. Being asked to complete the operational review into the WCFS shelter system by the Minister of Family Services and Housing is one example.

We are also at the preliminary stages of creating procedural guidelines between Department of Family Services and Housing (DFSH) and the OCA to track recommendations from the OCA on systemic reviews. We hope this will lead to a process by which these guidelines can become a part of the CFS province-wide foundational standards.

But there is still much to be accomplished.

The OCA now needs to enhance our relationship with the four new child and family service authorities and we need to build relationships with the new agencies and potential service providers that are coming into the system.

The OCA needs to have an enhanced presence in the communities where children and youth live throughout Manitoba. The OCA needs to establish a northern office to better serve the children and youth that live above the 53<sup>rd</sup> parallel.

The OCA needs additional resources to adequately meet the demands for case advocacy and to conduct systemic reviews when required.

We also need resources to reach out further so that we can be in residential care, youth correctional facilities, mental health facilities, foster homes and other care facilities where young people may need a Children's Advocate.

My experience as the Children's Advocate, over the last six years, has underlined my belief that the mandate of the OCA needs to be expanded beyond the child and family service system to include all other child caring systems and services provided by or funded by government. This expansion needs to be accompanied with clear and comprehensive authority. I believe that with the appointment of a new Children's Advocate, it would be timely to expand the mandate of the OCA.

But an expansion of the mandate will not be met without resistance by some. A past senior official inside the department once said to me that the system really did not need an advocate as child welfare workers are the advocates for the child in the system. I have long recognized that those inside the system do advocate for children and youth and often do so very well. But we must also recognize the competing roles, responsibilities and interests of the system and those who are employed within it. As long as services are provided by bureaucracies, including those beyond the child and family service system, "there will be the need for sustained attention to the way the system functions and malfunctions and in turn affect children".<sup>1</sup>

A supervisor in a child and family service agency once reported to the OCA that he believed that:

"Children do not have rights, they have needs and desires."

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<sup>1</sup> Knitzer, J (1976) *Child Advocacy: A Perspective*. American Journal of Orthopsychiatry 46 (2) 200-216.

This attitude may still exist today in the CFS system and does extend to other child caring systems. Clearly a child or youth's right to obtain services from an independent advocate is not a right afforded to all. It is only the children and youth in the child and family services system that are afforded the right to an independent Children's Advocate. However, even for those children and youth in the child and family service system, this right is conditional on those within the CFS system to inform a child, youth or their family of the existence of the OCA.

All children and youth who receive services from government and or government funded programs should be able to access a Children's Advocate. This Advocate must have the ability to ensure that those who provide services do not confuse what is a right with what they perceive and believe to be only a need or a desire.

In closing, I want to publicly thank the staff of the OCA, as without their commitment and dedication much of what we have accomplished would not have occurred.

I would also like to thank the members of the Legislative Assembly whose confidence in this office, and me as the Children's Advocate, allowed me to serve a second and final term. I also would like to thank a number of individuals who have provided guidance and support to the OCA as we moved from the Department to the Legislative Assembly. The Honorable George Hickey; Mr. Fred Bryans and his staff at Administration, Legislative Assembly; our fellow independent officers in particular Mr. Barry Tuckett and his staff at the Ombudsman office, all of whom have provided invaluable advice and support.

But most of all I would like to thank the children and youth that have allowed this office to be of assistance to them. I have learned a great deal from the many young people I have met and I will always remember our time together.

Janet Mirwaldt  
*Children's Advocate*



**An Overview of the Major Initiatives  
Undertaken by the OCA  
(1999-2005)**

We feel that we have accomplished a great deal at the Office of the Children's Advocate (OCA) since gaining independence from the Department of Family Services in March of 1999.

Our most important achievement is our ability to assist an ever-increasing number of children, youth and families. In 1998 the Children's Advocate's office fielded 685 requests for services. In 2004 requests for services had risen to 2,045, a number unprecedented in the history of the office.

The increased demand for our services can be tied to a greater awareness of our office and the services we perform. We also believe that being an independent office contributed to the increased number of requests for our services. Those coming to us are primarily seeking our help as a result of the actions and decisions of staff involved in the child and family service system. Many feel more comfortable voicing their concerns to someone who is separate and apart from the system.

With increased demand, and independence from DFSH, it became essential to restructure and refocus the office to meet new realities and opportunities. After being proclaimed as an Independent Officer accountable to the Legislative Assembly, the Children's Advocate developed a 96-page policy and procedures manual for the OCA. Its purpose was to set standards to handle casework and advocacy functions in a consistent manner, reflective of the Children's Advocate's role as an Independent Officer.

The Children's Advocate incorporated elements consistent with the best practice policies and procedures from other child and youth advocates as well as child-serving agencies from across Manitoba and Canada.

The manual is important because it ensures:

- advocacy efforts will be child and youth focused;
- advocacy services for children and youth across the province will be standardized;
- the gathering, recording and tracking of information will be standardized;
- greater continuity and consistency of advocacy services, particularly during times of staffing transition.

In conjunction with the policy and procedures manual, the Children's Advocate set a number of goals for the Office of the Children's Advocate. While much remains to be done, the Children's Advocate is pleased to report that significant progress has been made in a number of the areas targeted as goals for the OCA.

In 1999 the OCA set a number of goals that we wanted to accomplish.

1. Reaching out and becoming more accessible to children and youth involved in the child and family services system.
2. Providing educational opportunities for children and youth to learn about their rights not only in the child and family service system but about their rights as members of our communities
3. Working with the community on issues affecting children and youth
4. Developing partnerships with Aboriginal communities and agencies working with children and youth.
5. Developing a case management system to track issues affecting children and youth.
6. Promoting systemic change on issues affecting children and youth.

## **1. Reaching out to Children and Youth involved in the Child and Family Services System.**

As we are the Office of the Children's Advocate, first and foremost, we wanted to reach out to more children and youth. Over the last six years, we are pleased to report the number of children and youth that have contacted our office has risen substantially.

Before 1999, fewer than 10 per cent of the people who contacted the OCA were children and youth. In 2004, 20 per cent of the people who contacted the OCA were young people. We have opened advocacy files on well over 3,600 children and youth in the last six years. The majority were in care of the child and family services system. This means that each year since 1999, on average, we have served 1 of every 14th child or youth in care of the system.

When we became an independent office, we began to put initiatives in place to make it easier for children and youth to contact the Office.

The Office of the Children's Advocate moved to a ground floor location at 500 Portage Avenue to be more accessible to the public, particularly for children and youth. We also had prominent storefront signage installed to be more visible to those passing on Portage Avenue, one of the capital's busiest streets.

A new child-friendly logo was created. The logo was incorporated into all of the Children's Advocate's communications and outreach materials.

For the first time communications and public information materials were specifically prepared for youths and children as young as six years of age. The materials are still in use today. They incorporate information on the rights of children in care, outline the role of the Children's Advocate, and invite the reader to contact the OCA if they need help. These materials include information brochures directed to three levels of readers, business cards, stationary, pins, crayons, notepads, door hangers, computer mouse pads and decks of playing cards. The majority of the items were created exclusively for distribution to children and youth in care.

The innovative nature of these child-focused communications materials was recognized well beyond Manitoba's borders. The Children's Advocate's information package won top Media honours at the International Forum for Child Welfare, held in conjunction with WorldForum 2001 in Limerick, Ireland on August 30, 2001. As the forum attracted leading professionals, practitioners, policy makers, academics and managers from around the world to share their experience, exchange cross-cultural ideas and to explore new approaches to current issues surrounding the welfare of children, the award was a stellar recognition of the Children's Advocate's approach to communicating with children and youth.

As we firmly believe that the most important voice in the child and family services system is that of the child or youth within it, we helped VOICES-Manitoba's Youth In Care publish a guidebook about living in care. The book was called *Moving In, Moving Out, Moving On*. VOICES is an advocacy program run by youth, for youth (ages 14 to 24), who have been in care or who have experienced care within child and family services. The program is mentored by the Winnipeg Boys and Girls Clubs and funded by the Department of Family Services and Housing.

Staff within the Office of the Children's Advocate (OCA) created and launched the OCA website in November 2001. We believe that the website is a particularly useful information and education tool because young people widely use the Internet. Accessing the site is anonymous, yet provides ready access to learn about the OCA office and the ways that we might be able to help. The number of people accessing the website approximately doubles each year. By the end of 2004, the website had received more than 100,000 hits. All publicly-released Children's Advocate's annual reports; special reports and news releases are also posted there.

**New in 2004:** The OCA updated our website to make it more user-friendly and accessible to children and youth and the general public. The website is:

<http://www.childrensadvocate.mb.ca/>.

## **2. Educating Children and Youth About Their Rights.**

The Children's Advocate believes that a child or youth unaware of his or her rights is a child or youth at risk. Moreover, the rights of children are often overlooked or are not well understood by people in our society.

Children and youth have a voice but virtually no legal power to make anyone listen. This situation is even more acute for children and youth in care. Our experiences working with children and youth in the child and family services system have clearly shown that they often feel they have no say in what happens to them.

For these reasons, the Children's Advocate formally made children's rights a priority for the OCA, entrenching it in the policy and procedures manual that governs the operation of the OCA and its staff.

Consistent with members of the Canadian Council of Provincial Children's Advocates, the ideals proclaimed in the 1991 United Nations Convention on the Rights of the Child serve as a cornerstone to the activities, ideas and principles adhered to and promoted by Manitoba's Children's Advocate.

As advocates, promoting and protecting rights is an intrinsic part of who we are and what we do. Helping children and youth know that they have rights and what those rights are is a central focus of our work each day. Educating children and youth about their rights has taken place in virtually every single case we have been involved with over the years.

Along with the commitment we have shown to children's rights on a daily basis, the Children's Advocate is especially pleased to have helped introduce the *Right Way Program* to Manitoba. The program began as a joint initiative between Save the Children Canada, the OCA and Human Resource Development Canada. Beginning in March 2001, young people were hired to work in the OCA as youth advocates to provide interactive workshops that offered youth an opportunity to learn more about their rights and to practice advocacy skills in a responsible manner.

The Right Way program was originally envisioned as a three-year project. It concluded successfully on March 31, 2004, having conducted more than 125 workshops that reached more than 1,000 children and youth in Manitoba schools, group homes, after-school clubs, recreational programs, treatment facilities and youth correctional facilities. Additional workshops were also held for professional groups, parents and interested communities.

**New in 2004:** The OCA is also pleased to announce that a series of eight educational pamphlets for youth about their rights in our community will soon be released. The series was created in partnership with Manitoba's Office of the Ombudsman and the Manitoba Human Rights Commission. The pamphlets provide young people with information about their rights in a variety of sectors such as employment; education, the youth criminal justice system, the child and family services system including adoption services, and their rights in matters pertaining to custody, access and divorce.

The pamphlets will be accessible to youth across Manitoba and provide them with information about services that can assist them with questions or concerns about their rights.

## **3. Working With the Community on Issues Affecting Children and Youth.**

We said we wanted to develop and enhance partnerships with child and youth serving agencies and groups. A few particularly noteworthy highlights of these involvements are included below.

The OCA is proud to be a member of the **Canadian Council of Provincial Child and Youth Advocates** (CCPCYA). The alliance, founded in 1995, currently includes five provincially appointed Children's Advocates from Alberta, Manitoba, Newfoundland and Labrador; Ontario and Saskatchewan; the Nova Scotia Office of the Ombudsman; the Commission des droits de la personne et des droits de la jeunesse from Quebec; and the British Columbia Child and Youth Officer.

Although the mandates of each Advocate differ, through the Council they share a common commitment to further the voice, rights and dignity of children and youth. Through the Council, the members identify issues of mutual concern and strive to develop ways to address the issues at the national level. The Council works to do this by:

- Increasing the knowledge and understanding of children’s advocacy across Canada.
- Identifying areas for common action.
- Influencing policy and practice affecting children.
- Increasing public awareness of child advocacy and children’s’ issues.

Since the CCPCYA formed, its members have participated on a number of national committees such as the Advisory Committee on the Centre of Excellence for the Protection and Well-being of Children. The Council has also become involved in issues concerning federal legislation. The Council was represented by the Commission in the Supreme Court matter dealing with the constitutional validity of section 43 of the Canadian Criminal Code, the corporal discipline of children and youth by those having care, custody and or control of a child or youth.

In October 2002, Manitoba’s Children’s Advocate was elected to serve a two-year term as president of the CCPCYA. Before concluding her term on December 31, 2004, Manitoba’s Children’s Advocate participated in the development of the council’s strategic plan and developed administrative policies and procedures for the CCPCYA.

As a council member the OCA participated in and contributed to the CCPCYA *Youth Partners Project* (YPP). The YPP was funded by the Department of Justice Canada and began in 2002. The YPP is a national project looking at the experiences of young people in youth correctional facilities across Canada.

Manitoba’s Children’s Advocate, along with the Children’s Advocate from Saskatchewan and staff from the Children’s Commissioner from British Columbia presented an updated statistical review of the permanent ward population across Western Canada. The review was presented at the Canadian Adoption Council’s conference *Building Lifelong Connections* in Saint John, New Brunswick in October 2004. The review was an update of the one completed for the CCPCYA in 2001 by Manitoba’s Children’s Advocate.



The OCA helped the Department of Justice to conduct focus groups with youth in 2001 regarding services to children under 12. Young people between the ages of 12 and 20 who had been involved with the justice system participated. Some also had experiences with the child and family services system. They were asked to share their views and make recommendation on issues and initiatives affecting children under 12 when conflicts bring them into crisis situations with the police, Child and Family Services or at school.

The information was collected and included in a report that called for the creation of the **Turnabout** program. The Children’s Advocate accepted an invitation to be a part of the Steering Committee for Turnabout. Through the program, contacts are tracked between police and children too young to be charged for acts that could otherwise be dealt with in the justice system. Referrals are made to help children in trouble.



The Children’s Advocate and Christine A. Ateah from the University of Manitoba Faculty of Nursing co-edited ***Within Our Reach: Preventing Abuse Across the Lifespan***.

Completed in 2004, the book examines the issues associated with violence and abuse across the lifespan and reviews programs, practices and policies that have been developed to address these issues. Each chapter, co-authored by an academic and a community practitioner, addresses specific topics and issues of violence commonly associated within age groups from early childhood to late adulthood.

*Within Our Reach: Preventing Abuse Across the Lifespan* is the fifth book in the Hurting and Healing series published by Resolve, a tri-provincial prairie research network that co-ordinates and supports research aimed at ending violence and creating partnerships among service agencies, government departments and universities in the prairie provinces.



The Children's Advocate accepted an invitation to join the Board of Directors of the **Child Welfare League of Canada** in February 2004.

The Child Welfare League of Canada (CWLC) is a membership-based national organization dedicated to the protection and promotion of the well being of all children, especially vulnerable children and youth.

CWLC member organizations include the provincial and territorial ministries of child and family services, child and family service agencies, health and social services and university research units and faculties. CWLC members serve over half a million families each year.



**New in 2004:** The OCA joined the *Community Action Program for Children* (CAPC) advisory committee. Children's Advocacy Officer Terri Hammerback was appointed to the committee in August 2004. CAPC is a Health Canada program that provides long-term funding to community groups to establish and deliver services that respond to the developmental needs of children. The CAPC program focuses on prevention and early intervention for children and youth that are living in conditions of risk.

To continue our public education work in the community about the function and role of the OCA and the rights of children and youth, the OCA presents at a number of venues, as requested each year. Beyond presenting our projects at a number of conferences in 2004 we made presentations to child and family service agencies and staff, to staff and residents at residential care facilities, social work students at the University of Manitoba and residential youth care students at Red River Community College.

The OCA is also pleased to have continued our work with a number of provincial committees dealing with the issues affecting children and youth in the child and family service system. Currently the OCA is represented on the following committees: Provincial Advisory Committee on Child Abuse; Turnabout; the Child Inquest Review Committee; Voices, Manitoba Youth in Care; the Winnipeg Boys and Girls Club; the Canadian Council of Provincial Child and Youth Advocates; the Adoption Council of Canada; and the Child Welfare League of Canada.

The OCA is committed to providing educational opportunities for those who are choosing child welfare or social work as their profession. Since 2000 we have been committed to providing field placements within the OCA for Bachelor of Social Work students, Masters of Social Work students and interns from the Aboriginal Public Administration Program. In 2004, we have had the opportunity to work with two students. One student is in the Manitoba Métis Child and Family Services Intern program and the other is from the University of Manitoba Southeast Social Work cohort program.

#### **4. Building Partnerships with Aboriginal Communities and Agencies.**

In Manitoba approximately 80 percent of the children and youth involved with child and family services are Aboriginal; 66 percent hold treaty status. First Nations agencies often work in communities characterized by poverty and high unemployment with poor to deplorable living conditions and marginal access to services. These factors all impact upon the families who live in these communities.

Given these realities the OCA believed it was important for our office to be more sensitive to the issues faced by many of these children, youth, their families and the agencies that serve them.

In recruiting new staff for the OCA we placed greater emphasis upon including staff with experience working and living in First Nations and Métis communities.

Though limited resources make travel to remote and northern communities difficult, members of the Office of the Children's Advocate make a concerted effort to get to as many communities outside Winnipeg as possible each year. But more needs to be done to allow the OCA to be more accessible.

In 2001, after consulting with community members in northern Manitoba and completing a feasibility study entitled *The Need for Children's Advocacy in Northern Manitoba*, the OCA submitted a funding proposal to the Legislative Assembly Management Committee which would enact the recommendations, which included the establishment of OCA sub-offices in Thompson and Opaskwayak Cree Nation. This request was not granted.

However, we were pleased with the support and partnership that the process generated between our office and groups, agencies and communities in Northern Manitoba.

We believe that there is much to be learned from innovative practices that already exist in Aboriginal agencies. For example, the OCA entered into partnership with the Awasis Agency of Northern Manitoba and the University of Manitoba Faculty of Social Work to look at the positive outcomes for children and youth living in care with family, otherwise known as kinship care. The project entitled *Evaluating Factors that Contribute to Positive Outcomes in the Awasis Pimicikamak Cree Nations Kinship Care Program* received a research grant from the Centre of Excellence for Child Welfare (Health Canada).

**NEW in 2004:** The Children's Advocate and George Muswaggon, the Associate Director of the Awasis Agency, presented the project's preliminary findings at the Canadian Adoption Council's conference *Building Lifelong Connections* in Saint John New Brunswick in October 2004.

The project was also presented to the Awasis Agency Annual General Meeting in Long Plains Manitoba in November 2004 and will be presented in June 2005 at the *Pathways to Resilience* conference, an international conference, being held in June 2005 in Halifax, Nova Scotia.

## **5. Basing Recommendations on Information Gathered from Improved Data and Case Management Systems.**

We set out to develop a database management system that could capture and identify case and systemic trends as well as issues of concern to children and youth.

The information, figures and facts contained in the database would be used to create and support specific recommendations from the Children's Advocate regarding issues brought forward by children and youth involved with the child and family service system.

To implement this plan, the Children's Advocate introduced a new case-reporting format that make it possible to collect and retain more detailed information. We then introduced a new case management database system for the Office of the Children's Advocate. Not only did the database allow us to easily access information for individual cases, it enabled us to track and pull information trends out of all the cases stored on the database. The database makes it possible to accurately identify systemic issues and do more-in-depth analysis that has resulted in a greater understanding of these issues.

For example, we can identify the top issues of concern regarding the care children and youth are receiving in the child welfare system by age. We have shown that the top concerns can vary based on a child's age.

As a result of the database, the OCA is able to track dual mandate cases. The information that we have gathered over the last six years demonstrates that approximately 10 per cent of the cases served by the OCA are dual mandate cases, meaning that children and youth are involved with service providers in more than one government department. Though a CFS worker may be the individual who holds final, often definitive, responsibility to the child and over the child, their ability to influence, control or direct resources needed for a child or youth in another system is limited. In these situations the OCA often works alongside the CFS system to help facilitate a better coordination of services across service sectors. We can also track the type of concerns involved in dual mandate cases. This information can play an important role in determining where long-term resources could be placed to bring about long-term systemic change that improves the quality of care for children and youth.

**New in 2004:** We updated and implemented a new version of our case management software that will allow us to capture information more efficiently and enhance our ability to store, retrieve and analyze data.

## **6. Promoting Systemic Change for Children and Youth.**

We said that we wanted to promote systemic change by influencing law, policy and practice in all areas that affect children and youth that receive services from the Child and Family Services system.

### **Adoptions by Those in Common-Law Relationships in Manitoba**

In June 2001, the Manitoba Government commissioned *The Review Panel on Common-Law Relationships in Manitoba* to provide government with advice "on a series of issues respecting persons in common-law relationships." At the time of the review, the practice in Manitoba allowed gay or lesbian individuals to adopt children as individual applicants, but did not afford this opportunity to gay or lesbian couples.

The Review Panel Co-Chairs invited the Children's Advocate to make a presentation. The Children's Advocate's presentation which took place on August 31, 2001, was restricted to *The Adoption Act*. In part, it stated that:

*"The needs and best interests of the child should be the primary consideration in adoption. Agencies, both private and public, should assess each applicant from the perspective of what would be in the child's best interests. All people should have an equal opportunity to apply to be adoptive parents and to have their qualifications as adoptive parents considered. All applicants should be assessed fairly on their abilities to successfully parent a child needing family membership. Consideration should be given to personality and maturity factors as well as the abilities of the applicant to meet specific needs of the child."*

*"Gay and lesbian applicants should be assessed in the same manner as any other adoptive applicant. It should be recognized that the sexual orientation of the applicant(s) and their capacity to nurture a child are separate issues."*

The Children's Advocate recommended to the Panel that:

*"Legislation should ensure that the best interests of the child are of paramount consideration in any decisions respecting the adoption of children. Legislation should ensure meaningful child and youth participation in any decisions affecting them. This would include a child's right to participate in the matching process and consent where applicable and appropriate to adoption."*

### **Paungassi Report**

The OCA was contacted on December 18, 2002 regarding alleged incidents involving Southeast Child and Family Services (SECFs) staff detaining in local jail cells several children they believed were under the influence of solvents and at risk for self-harm in July and August 2002.

The OCA investigation into this matter identified a number of issues, including a high degree of solvent abuse in the community; a lack of community resources available to assist SECFs staff; the questionable manner in which the agency made case decisions and file recordings; and an apparent inability for the community, agency and other organizations to tackle these issues.

More details of the review are available at the Children's Advocate's web site:

**<http://www.childrensadvocate.mb.ca/>**

## **The Use of Hotel Placements as Emergency Care in the City of Winnipeg**

As a result of community-based complaints, the Children's Advocate investigated aspects of Winnipeg Child and Family Services' (WCFS) use of hotels as emergency placements for children and youth. In May 2000, the Office of the Children's Advocate completed a special report on *The Use of Hotels as Emergency Placement by Winnipeg Child and Family Services*.

The Children's Advocate was concerned about the Agency's reliance upon hotels to house children and youth in crisis. The Children's Advocate found that 2,553 children and youth were placed in hotels by WCFS between April 1, 1995 and Jan. 11, 2000, totaling 61,190 days of care in hotels. The per diem for hotel placements averaged \$305 per child in 1999, yet the hotel placements offered almost no resources for treatment or care of a child.

The Children's Advocate was especially concerned about the number of younger children being placed in hotels. The investigation found that children under the age of 12, a majority of which were under the age of 5, were most likely to be placed in hotels.

The Children's Advocate was concerned there appeared to be no plan in place to find alternative emergency care placements or to end the agency's reliance upon hotels as temporary homes for children. Hotels seemed to be a permanent component in the agency's emergency housing strategy. The investigation found that the average length of stay in a hotel for a child was more than 18 days. Approximately 20 per cent of children placed in hotels were re-admitted into hotels in that same year.

The staff that were caring for children and youth in hotels were largely employees of private companies contracted by the agency.

The information presented in the report led the agency to create an action plan to deal with the situation. The agency was able to demonstrate a reduction in the number of children placed in hotel over a three-month period ending in January 2001. They also were able to show trends that suggested that the agency had reduced the percentage of younger children who were staying in hotels for more than 30 days as well as those who were being placed in hotels on multiple occasions.

## **The Emergency Shelters Review**

The review was precipitated by concerns about the quality of care in the WCFS shelter system. Concerns were also raised about the safety of children and the staff, the cost of the program and the impact that shelter care may have upon children and youth.

In completing the review, the OCA interviewed 124 children, youth, staff, managers and collaterals with direct knowledge and experience in the WCFS-EAPD program. Five years of WCFS-supplied statistical data for the period ending 2003 was reviewed. On-site inspections were conducted at 47 shelters. The OCA reviewed all EAPD-related material made available and completed a file audit on all EAPD administrative files.

The OCA found 3,085 children were placed in the EAPD emergency care system between 1998 and 2003. Of these, 2,318 children and youth were placed in EAPD shelters. Those children who resided in the shelters stayed an average of 44 days. Forty (40) per cent remained longer than 60 days. Sixty (60) per cent were 11 or younger, and 25 per cent were three years of age or younger. More than half of all children entered EAPD system (shelters and other emergency care) from the foster care system.

The shelters presented a growing problem. They housed about 120 children and youth each day. They were housing younger children and more were staying in shelters longer. As spaces were needed, they were added with little planning or overall thought as to whom they were planning for. At one point, the number of shelters more than doubled in an 18-month period, going from 32 to 72 shelters.

The Review was completed and submitted to the Minister of Family Services and Housing in March 2004, who released the OCA review and the department's response on April 7, 2004.

The complete review is available at the Children's Advocate's website:

<http://www.childrensadvocate.mb.ca/>.

In response to the OCA's review the province also released a plan of action to deal with the issues and recommendations raised in the review.

The province's action plan identified four key steps to be addressed immediately:

- Creating 50 new spaces with foster care resources for children under age eight.
- Establishing an implementation committee to further address major recommendations;
- Implementing key recommendations to improve quality of care in the shelter system, such as increasing supports for shelter workers; and
- Following through on recommendations to strengthen the system, such as hiring more staff for licensing and monitoring of shelters.

## **Has the Emergency Shelter System Changed as a Result of the OCA's Hotel and Shelter Reviews?**

After the shelter review was made public, questions again emerged in media reports about the DFSH-Winnipeg Branch's use of hotels as emergency care. It was noted that hotels were continually being used in conjunction with the shelters to provide emergency housing for children and youth.

During the shelter review, a former Winnipeg Child and Family Services staff member aptly summed up the state of emergency care in the child and family services systems by stating *"It was crisis management without management realizing there was a crisis."* Following the hotel and emergency shelter reviews, we all knew what the crisis was and still is – the inability in the child and family services system to adequately resource the number of children and youth who enter into their care.

**New in 2004:** Following the release of the OCA's *Review of the Operation of Winnipeg Child and Family Services, Emergency Assessment Placement Department (EAPD) Shelter System*, the OCA met with the Shelter Review Implementation Committee. The OCA provided and will continue to provide information and consultation to the committee and its subcommittee and staff on an as-requested basis.

It is our hope that the Implementation Committee will now be able to systematically address the issues related to the emergency care of children and youth and we anxiously await their final report.

## **The Provincial Child Abuse Registry**

In December of 2000 a senior manager in a child and family service agency contacted the Children's Advocate. The agency's child abuse committee was considering the registration of a twelve-year-old child on the Provincial Child Abuse Registry (PCAR). The agency and members of its child abuse committee questioned the multiple and possible conflicting roles of the agency. The agency was the body that investigated the matter, removed the child, was caring for the child, was acting as the child's treatment provider, was the child's acting guardian and was proceeding to register him on The Child Abuse Registry. The agency, on the advice of the committee agreed to consult with the OCA.

The OCA agreed to become involved in the case and became the young person's litigation guardian. The OCA believed that the agency was indeed in a conflict and could not adequately represent the child. Nor could the child's parents, who themselves were subject of multiple protection and abuse investigations and who had eventually lost custody of all their children. It was also the position of the OCA that the legislation did not allow for the registration of children under 12 or of children age 12 and over for acts committed when they were under the age of 12.

## The Purpose of the Provincial Child Abuse Registry

As stated in 1996 by the then Minister of the Department of Family Services,

*"The Registry targets people that abuse children in positions of trust as well as those who have been found guilty of child abuse by a court of law. Due process should be preserved."*

No one who is concerned with the protection of children would argue that a provincial registry is not important or necessary. To ensure the protection of children and youth across Manitoba, Justice and child welfare authorities should track these individuals. The registry is but one tool in the accomplishment of this goal. Information pertaining to offenders must be immediately accessible not only to Justice and child welfare authorities but to community agencies that employ, either through paid or volunteer work, individuals to care for or provide services to children and youth. The current registry allows for such information to be shared with these individuals.

The registry contains names of individuals, who are placed on the registry under three distinct categories as they have been either,

- Found guilty in a court of law of child abuse offences (category A).
- Or who have been found by a Family Court to have abused a child and thereby caused a child to be in need of protection (category B);
- Or who are believed by a child abuse committee to have abused a child (category C).

But what if that individual, who is believed to have abused a child is himself or herself a child under the age of 12? Should that child's name be placed on a Provincial Child Abuse Registry? Does the current *Child and Family Service Act* allow for the registration of the young child? Does a young child under the age of 12 have sufficient cognitive functioning to be held accountable for their actions and understand the implications of being placed on the PCAR? If so, should that child be registered on the same registry with youths and adults, the majority of whom are registered after a conviction in a criminal court?

**The Numbers:** Entry on the registry is time limited, therefore the number of names on the registry fluctuates. We know that as of January 21, 2005, there were 2,571 names<sup>2</sup> on the registry, 53 or two per cent were youth aged 12 to 17.

Between 1990 to 2003 it was recorded that 206 youth aged 12 to 17 were placed on the PCAR.

**Age at Registry (1990-2003)**

Age of Registrants	No. of Registrants	Percentage
Under 12	0	0
12	4	1.9
13	10	4.9
14	36	17.5
15	58	28.1
16	47	22.8
17	51	2.8
<b>Total</b>	<b>206</b>	<b>100</b>

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<sup>2</sup> A name may appear on the registry several times due to different multiple convictions/victims/registrations.

### Registration Category - Youth (1990-2003)

Registration Type	No. of Cases	Percentage
A Criminal Court	154	74.8
B Family Court	0	0
C Committee Opinion	52	25.2
<b>Total</b>	<b>206</b>	<b>100</b>

In looking at the composite data from 1990 to 2003, the majority of youth (90.7 per cent) were male, registered after a criminal court conviction (74.8 per cent) for a sexual assault (94.7 per cent).

Though the PCAR did not note any individual child under the age of 12 registered before the case brought forward by the OCA, youth over the age of 12 have been registered for acts believed to have been committed when the youth was under the age of 12. Given that children cannot be criminally charged for acts committed under the age of 12, these registrations were entered under the C category.

The information obtained by the OCA would indicate that under C registrations, as recorded in June 2003, eight youth were registered when they were over the age of 12 for incidents occurring prior to their 12<sup>th</sup> birthday. Some of the incidents occurred at the very young age of five to the age of 11. The average age at which these youth were registered at was 14.

The issues at the crux of this case were twofold; the first concerns a question of law, the second a question of procedural fairness and best interests. The first question was whether *The Child and Family Services Act* allows agencies to register children under the age of 12 on the Provincial Child Abuse Registry. The second question concerns the process by which children under 12 are registered and whether such registration is in their best interests. The issue of best interests is linked to the issue of the process by which registration occurs. This is particularly so for children who are in the care of an agency because the agency acts as their guardian, their treatment provider, and the entity which decides if they are to be registered on the Child Abuse Registry.

#### **The Question of Law**

It is accepted that children under 12 cannot be held criminally responsible for their actions given their developmental and cognitive abilities and as such cannot be charged with a criminal offence. Therefore, no child under the age of 12 can be placed on the registry by a criminal court under category A. The Family Court, under category B, rarely submits a name for the PCAR and has never submitted a young child's name for registration. In fact the Family Courts have submitted less than one per cent of the total registry entries. An agency's child abuse committee is the sole body that has considered children under the age of 12 for registration. They do so under category C.

It was the OCA's position that *The Child and Family Services Act* did not allow the registration of children under the age of 12 by the agency's child abuse committee because no specific reference to children of that age was set out in the legislation. It was the agency, the DFSH and the Attorney General's collective position that the Act did allow for the registration of children under the age of 12 because nowhere in the Act did it say that these children could not be registered. At the same time, there was general confusion in the field as to whether the Act allowed for a registration of the young child. Some members of the DFSH thought it did not, some believed the Act did, some viewed it with uncertainty.

Overall feedback to the OCA was that few had ever tried to register a young child, as often these children were victims of abuse themselves. As such these children were not considered offenders but reactive victims, unfortunately and

tragically reliving their own victimization. The intervention goal was to support and counsel the young child. Registration was not normally considered to be part of the treatment plan.

Clearly the matter needed to be clarified and the OCA attempted to gain clarification in the Courts. A hearing took place in the Court of Queen's Bench in which that Court ruled that its jurisdiction was limited to determining whether abuse had occurred. On the facts of the case before it, the Queen's Bench concluded that abuse had occurred. The Court also concluded that the legislation did not preclude registration of children who had committed abuse when they were under the age of 12.

The OCA appealed the Queen's Bench decision to the Court of Appeal. The Court of Appeal considered the following questions on October 18, 2004:

1. Do the registration provisions of *The Child and Family Services Act* apply to children under the age of 12 who abused children, i.e. can a child who is under the age of 12, who abuses another child, be registered on the PCAR under category C with respect to that abuse?
2. If the registration provisions do apply to children who commit abuse when they are under the age of 12, is a Court entitled to invoke its *parens patriae* jurisdiction and to engage in a consideration of the best interests of the child who committed the abuse?

On January 21, 2005, the Court of Appeal rendered a unanimous decision. On the first question, the Court of Appeal concluded that the registry applies to children, who, when they are under 12 years of age, abuse other children. The Court observed that there were no specific age restrictions in the registry provisions and that if an age restriction had been intended, it would have been simple for the legislature to include one.

On the second question, the position of the OCA was that the child abuse committee of the agency must first consider the child's best interests, and that if a decision to register a child is appealed to the Court of Queen's Bench pursuant to Section 19 (3.3)(a) of *The Child and Family Services Act*, the Court must also consider if registration is in the child's best interests. The OCA position was that it was part of the Court's *parens patriae* jurisdiction to review a committee's decision and to ensure that all decisions made under *The Child and Family Services Act* with respect to children include a consideration of their best interests. This would include considering whether registering a child under the age of 12, or who had committed abuse while under the age of 12, is in the best interests of that child. Further, the position of the OCA was that the current legislation does not provide any direction as to how the best interests of a child alleged to have abused another were to be considered, and that the legislation did not specifically prevent the Court from considering a child's best interests. Therefore, the OCA argued there was a gap in the legislation that should be filled by an exercise of the Court's *parens patriae* jurisdiction.

However, the Court of Appeal disagreed and found that:

*"The Registry regime provides a complete response to what has occurred in these circumstances. The best interests of children involved... are to be considered by the Committee and the Court is only to determine whether abuse occurred or not. In these circumstances, the Court has no parens patriae jurisdiction which it can exercise.*

*The function of the Court of Queen's Bench at a hearing pursuant to Section 19(3) of the Act is restricted to a determination of whether abuse occurred. The restriction is not a gap. Therefore, in these circumstances, the parens patriae jurisdiction of the Court of Queen's Bench is ousted by the registry regime in the Act."*

Based on the current wording of the Act, the Court of Appeal has concluded that the Courts cannot consider a child's best interests when reviewing a registration, because the legislation provides that such authority lies with the agency's child abuse committee. It is the committee that solely determines if registration is in the best interests of all of the children involved. The child abuse committee in its deliberations must weigh the best interests of children, including the child victim, the child who was under 12 who was alleged to have committed abuse, and all other children in the general community.

The Court of Appeal did not comment, except in passing, on the question of process because they had determined that this issue was not before the court on an appeal from a decision made under Section 19(3.3) (a) of the Act. The Court did state that the only way for a Court to review the process would be on an application for a judicial review of the Child Abuse Committee's decision.

### **The Question of Process**

CFS agencies are directed under the Act to form child abuse committees to review cases of suspected child abuse and to advise the agency concerning what actions, if any, may in its opinion be required to protect the child or other children (CFS Act s. 19 (1)). Part of the child abuse committees' role and one that is typically considered its primary role is to consider the registrations of individuals on the PCAR.

In carrying out this role each committee has a responsibility under section 19(3) of the Act to:

- Form an opinion whether the person abused the child;
- Form an opinion whether the name of the person should be entered in the registry; and
- Report its opinions and, where it has formed an opinion that the person has abused the child, the circumstances of abuse, to the agency.

Once the committee has formed these opinions and forwards the information to the agency, the agency submits the individual's name to the provincial Director of Child Protection for entry onto the PCAR.

The process by which a child abuse committee can register any individual is clearly spelled out in legislation and regulations. The process begins when a worker suspects or believes that abuse has occurred. The worker refers the case to the agency's child abuse co-ordinator for review. Before making its decision, the child abuse committee must provide the individual who is suspected of abusing a child an opportunity to provide information to the committee about the abuse incident.

Individuals, including children, whose names are being considered for entry onto the PCAR, are notified that they have an opportunity to provide information to the committee. Notification is provided using a prescribed form called CA-1 *Notice of Opportunity to Provide Information*. Notification can occur through personal service; registered mail or a notice to the person's home. The Notice advises the person that if there is no response within 30 days, the committee will proceed and make their decision under s. 19(3)(a) and 19(3)(b) of the Act. In addition to receiving form CA-1, the individual also receives an informational brochure entitled "The Child Abuse Registry".

The committee must provide a meaningful opportunity to provide information and in "exceptional circumstances" may allow the individual to communicate in other than written form. The decision as to how one can communicate to the committee is solely at the discretion of the committee.

Following the review of all information, regulations require the committee to answer two questions.

1. Has the person abused the child? If yes, then;
2. Should the person's name be entered on the registry?

In a province wide training module<sup>3</sup> for child abuse committees, the DFSH advises committees that in making this decision to register an individual, the committee must ask "Why wouldn't we register this person?" The training module advises the committee that "there should be powerful and compelling reasons not to enter the offender's name onto the registry".<sup>4</sup>

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<sup>3</sup> Manitoba Family Services and Housing (1999). "Child Abuse Committee Guidelines."

<sup>4</sup> Ibid p. 19

The provincial training module also advises that a committee should examine a number of issues when considering registration including a child's best interests, but this consideration is not meant to apply to children who are being considered for registration. The section appears restricted to consideration of only the child victim's best interest and then only in circumstances where registration would be "onerous or harmful to the child and the family." The module goes on to state that "this is the case where the offender is a parent who has made major changes and the positive effects of those changes are well-established in the family."

The provincial training module does not address the issue of what a committee must consider if the individual who is alleged to have abused a child is a child under the age of 12.

The child abuse committee must report its decision and the reasons for it, regarding registration to the agency. The agency is then required to notify its intention to register to:

1. "The person who the committee believes has abused the child, where the person is 12 years of age or older" [s. 19 (3.2) (a)].
2. "The parent or guardian of the person who the committee believes has abused the child; where the person has not reached the age of majority" [s. 19 (3.2) (b)].
3. The parent or guardian of the child who was abused [r. 14(4)].
4. "The child who was abused; where the child is 12 years or older" [r. 14(4) (b)].
5. "The director" [r. 14(3) (c)].

Individuals can object to their name being placed on the PCAR to the Court of Queen's Bench within 60 days of receiving notification. If no objection is filed the name is placed on the registry.

The role of the Court of Queen's Bench in dealing with such appeals is restricted to only determining if abuse occurred. The court cannot review the decision-making process or procedures that the child abuse committee took when reaching a decision. Nor can the courts consider the best interests of the child or children involved in the matter. The Court's decisions are final and not subject to further appeal.

A person's name remains on the PCAR for a period of 10 years or until the child victim turns 18 which ever is longer.

Let's put all of this process into context.

The current legislation and accompanying regulations regarding registration prescribe a very complicated and detailed process by which C registrations are processed. This process is difficult for most adults to comprehend; now imagine if it is a child under the age of 12 who is the subject of such a process. It is hoped that in such situations the child's parents or guardians could act on behalf of the child. But what if the child was in care, or was in the care of an adult who was not prepared to act on their behalf or who were in a conflict of interest in acting for them? Imagine that the child under the age of 12 was in the care of the very agency that is charged with the responsibility to act as guardian and that is now placed in the role of registering the child on the PCAR.

For the child who has perpetrated or alleged to have perpetrated the violence and been brought into care, the agency can be required to move from its role as investigator and assume the role of guardian for that child. The agency is required by law to forward the name of the child to the child abuse committee who then determines if abuse has occurred and if that child's name should be entered on the registry. During this process the agency is required to provide evidence to the committee that the child has indeed abused another child and at the same time effect the notice of opportunity for that child to provide information to the committee for its deliberations. As his or her guardian, the agency must assist the child to provide information to the committee. This may be the same agency staff person who has already provided his or her opinion to the committee as to whether abuse has occurred.

Once the information is before the committee and the committee determines the child's name should be placed on the registry the committee forwards that information to the agency. The agency in turn notifies the child of the agency's intent to register. The agency as the guardian of a child in its care notifies itself of its intent to register the minor child.

In these situations appeals are unlikely, as the agency would then be appealing the decision of its own child abuse committee; a process that requires an agency to defend, in the courts, their committee's decision to register the child. Even if the child was successful in reaching the appeal stage, the courts will not, on the basis of the current wording of the legislation consider whether it was in that child's best interest to be entered on the PCAR.

### **The Provincial Advisory Committee on Child Abuse (PACCA)**

The Provincial Advisory Committee on Child Abuse (PACCA) is a group made up of representatives from a range of provincial government and community organizations. PACCA considers policy issues related to child abuse and makes recommendations to the Executive Director of Child Protection and Support Services, a branch of Manitoba Family Services and Housing. Although the Government of Manitoba supports PACCA and is represented on the committee, PACCA is an independent body. The purpose of PACCA is to advocate for the most appropriate and easily accessible support, service and treatment for children in Manitoba who may be victims of abuse.

In 2001 PACCA had received feedback from the field that since the changes to the legislation the process as it related to the PCAR was problematic. In particular the process surrounding C registrations was causing concern and the number of C registrations had dramatically declined. The OCA, as a member of PACCA, also raised the concern that children under 12 were being registered on the PCAR.

PACCA then formed a sub committee to review the issue and report back to the larger group, who in turn would provide advice to the DFSH. The Children's Advocate was a member of this sub committee. The sub committee reported its conclusions to PACCA in October 2004. In turn PACCA provided the sub committee report to the DFSH.

It was reported to PACCA by agencies, which responded to a request for feedback by the DFSH in 2001, that C registrations have caused concern for child welfare agencies. The feedback from some agencies indicated that there might be a differential response and process across Manitoba with respect to C registrations. PACCA made the following recommendations.

- The DFSH undertake an audit of C registrations across Manitoba to determine if a differential response exists. This would include auditing all registrations past and present (post 1999) to determine the circumstance of the registration and assurances that each registration abided by current provincial regulations.
- The DFSH enter into discussion with the child welfare authorities and agencies to discuss the concerns with the PCAR process.
- The DFSH undertake to complete a program review of the PCAR.
- The DFSH put forward legislative changes to *The Child and Family Services Act* similar to wording in Nova Scotia's act that states that no child under the age of 12 is to be considered for registration or registered under the Provincial Child Abuse Registry.
- All youth being considered for placement or being placed on the PCAR be provided with mandatory representation, independent of parent, guardian or agency. Consideration be given to having the Office of the Children's Advocate (OCA) take this on as part of their mandated role to represent the rights, interests and viewpoints of children and youth. Additional resources for the OCA to carry out this function should be provided.
- CAC should be required to consider if placing a youth's name on the PCAR is in that individual's best interest, separate and apart from the best interest consideration of the child victim.
- In situations where it is believed that the youth has a cognitive or intellectual impairment, agencies should be required to have an independent assessment completed on the youth as to whether it is in the youth's best interest to be registered.

- Once registration has occurred for a youth the registration be reconsidered and reviewed upon the youth's 18th birthday to determine if his or her name should remain on the registry.
- The DFSH provide clear and written criteria around C registrations. The guidelines should assist agency committee in decision-making and increase consistency between and amongst committees. Guidelines should pay particular attention to directing committees' with respect to the registration of children over the age of 12.
- The Provincial Director takes an active role in enrolling names on the registry. The final decision to enroll a name is left with the provincial director. Such a review process may assist in ensuring standardization and consistency of the registry process across the province.
- The multidisciplinary training program for CAC be evaluated. The results should be used to assist in the development of an ongoing training curriculum for agency staff and CAC members.
- Annual training be provided to all agency staff and CAC members.

## Conclusion

Is it in a child's best interest, particularly children under 12, to be registered on the Child Abuse Registry? Though allowed by the Act, it is still the respectful position of the OCA that children under 12 should not be registered – a position supported by PACCA. As well, children who are over 12 but are alleged to have committed registrable acts when under 12 should also not be registered. It is the opinion of the Children's Advocate that registration may not be in these children's best interests.

The OCA supports the need for a PCAR but the Children's Advocate is concerned that the process is flawed, particularly for children under 12 or for children over 12 who have committed acts considered for registration when under 12. The process of registration treats all individuals who are suspected of abusing a child the same no matter if that individual is a child under 12, a youth or an adult. Clearly these three groups are not the same in their ability to provide information to the committee or to appeal a committee's decision. It is understood in our community that children and youth require additional protection, given their vulnerable stage of development. The mere fact that we have a child welfare system attests to the fact that children are vulnerable and at times may require the protection of the state. It is ironic that the registry process does not consider the vulnerable nature of these children.

The process by which some children who are in care of an agency are considered for registration is also inadequate. In carrying out the requirements of the Act, these agencies are often in competing and conflicted roles. The Court of Appeal states that it is the child abuse committee, which has to consider the interest of not only the child victim but of the child who is alleged to have victimized, as well as all other children. However, nowhere are committees directed or trained to consider the multiple interests of the children that come before them. The provincial training module does not speak to the best interest of the young child or for that matter the youth that is to be considered for registration. The module does not speak to the registration of children or youth who are cognitively or intellectually delayed or who possess special needs, such as FASD. Even if some committees do consider the needs and interest of children they are considering for registration, there appears to be no requirement for them to do so.

Agencies are not required to ensure that the child or youth has separate and independent representation when their names are put forth for registration. Children and youth are placed on the registry for the same time frame as an adult with no consideration given to review their matter at the age of 18.

Agencies can choose not to register children under 12 but that situation has the potential of creating a differential response to registrations across the province. As a result, a child's chances of being registered may be greater in one area of the province than in another area.

It has been noted that the process under Category C is flawed but what of the other categories? The majority of individuals on the PCAR are registered by the criminal court (category A) and this process seems to be working. However, category B registrations make up less than one percent of all registry entries.<sup>5</sup> This means that the very courts that find children in need of protection, often as a result of abusive acts of caregivers, may not be forwarding the names of these individuals to the PCAR.

In taking on such issues the Children's Advocate may raise questions as to how we as a society treat children - all children. These questions may be uncomfortable for many, but they are questions that need to be raised. Is this what we want to do? Is this how we want to treat children? Do we really believe that it is in a child's best interest to register them on the PCAR for incidents that may have occurred at the age of five?

The Children's Advocate would suggest that it is not and would urge the government to amend the legislation to ensure that children under 12 cannot be placed on the Provincial Child Abuse Registry.

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<sup>5</sup> As of January 21, 2005



## The Future

## **The AJI-CWI: The Future Child and Family Services System**

The OCA has long supported the Aboriginal Justice Inquiry – Child Welfare Initiative, a province-wide initiative to restructure the child and family services system in Manitoba. The purpose of the initiative is to "develop a new system that recognizes and respects cultural difference, as well as acknowledges the rights of First Nations and Métis peoples to develop and control the delivery of their own child and family services".<sup>6</sup> Beginning in 2000, the responsibilities for services began to be transferred from the non-aboriginal agencies to First Nations and Métis agencies.

Where does the Office of the Children's Advocate fit into the new system? The role of the OCA and its reporting relationship to the Legislative Assembly will not change under the new child and family services system. Our office will continue to work alongside the new Authorities and agencies delivering services to children, youth and their families. As well, the OCA continues to develop our relationship with the Department of Family Services and Housing as it moves towards the integration of child welfare services.

We have heard few concerns about this transfer process. As we now work with the First Nations and Métis agencies our role in these cases has been seamless and advocacy services have not been disrupted.

As the process moves into the City of Winnipeg, it is expected that 2,500 files will be transferred from Winnipeg Child and Family Services to the respective First Nations and Métis agencies beginning in May 2005. A new Joint Intake Response will be developed to address emergency and intake services throughout the City of Winnipeg by October 2005. These changes represent a challenge for all involved including the OCA. The majority of our case advocacy has been with Winnipeg Child and Family Service as this was the largest agency in Manitoba. Over the next year as these cases transfer, the OCA does not have adequate resources to fully track issues that may arise in a transfer process of this magnitude.

However, the challenges can also be seen to represent opportunities. As stated in the 2000 AJI-CWI, Strategic Design Principles, the restructuring of child and family services will create a service delivery system that will "protect and honour children by building and empowering community, family and personal capacity through the delivery of holistic, restorative, integrated, preventative, supportive and protective services." The opportunity now before us is to ensure that beyond building a governance structure, we also build a service delivery system that can achieve its stated and intended impact. As the service delivery systems, throughout the province are established, it is now timely to look at services, their quality and impact on children and youth. It is now timely to develop a system wide capacity to measure and evaluate services and build on best practices.

Foundational standards introduced by the DFSH in January 2005 are one step towards building a common base from which to begin building the capacity to measure and evaluate services. The establishment of the Agency's Accountability Unit and the re-establishment of the Quality Assurance program for residential care are two other positive steps.

It is, however, unrealistic to assume that fewer children and youth will enter into care or fewer families will require services from child and family service agencies as the process is completed. Services may be delivered under a different framework but the need for services will likely be the same. The issue is how these services will now be supported.

Child and Family Services agencies are charged with the overwhelming mandate to protect children and support families in our communities. They are there largely when other systems have failed.

It is well documented that Aboriginal children and youth are over represented in the child welfare system. However, the factors that underlie their disproportionate representation are either not well understood or researched. A recent

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<sup>6</sup> Correspondence to the OCA from the AJI-CWI Standing Committee, February 3, 2005

Canadian study, completed by Nico Trocme, Della Knoke and Cindy Blackstock, found that "poverty, inadequate housing and substance abuse" are among the critical factors associated with the high rates of child welfare involvement for aboriginal families.<sup>7</sup> Just as many families have little control over the factors associated with poverty and inadequate housing, so too do child welfare agencies.

As stated by the authors:

"While shifting control of child welfare services to Aboriginal communities should help in the development of services that are more appropriately geared to the needs of Aboriginal children and families, we should not expect to see a significant decrease in admission rates until resources are allocated to address social problems that undermine parents' abilities to care adequately for children".

Child and family service agencies cannot address these issues alone. They require our collective support and action to deal with the real issues that result in children and youth coming into care. This is particularly true for First Nation's agencies that historically have not been funded to provide preventative and support services to children, youth and families living in First Nation's communities.

As stated in our 2000-2001 Annual Report,

"The new system ...will require a shift, not merely in specific programs but in collective strategies that we develop on behalf of children and youth. New strategies need to emphasize our collective community role and responsibility in the raising of our children and youth. We require a common approach among all child caring services (health, education, justice, and child and family services), a common language, a common understanding on what needs to be provided on behalf of children and youth and a basis for common action. We need to purposefully provide all children and youth with relationships, opportunities and experiences they need and deserve if we are to improve their welfare and hence their outcome."

The AJI-CWI process has the potential to effect change for all children and youth. Individually agencies cannot address the underlying socio-economic issues that contribute to family breakdown, but this process creates an opportunity to look at how we provide services and how we include children and youth in designing services. As reported in our 2000-2001 Annual Report children and youth have long told us what they need from the child and family service system.

- They require the opportunity to develop a consistent and sustaining relationship with an adult caregiver.
- They need to be safe from abuse, neglect and exploitation.
- They need to live in environments (families and communities) that provide stability and predictability.
- They require services that meet their individual needs while focussing on their strengths, not their perceived weaknesses.
- They need to have contact with, and be connected to, their families, communities and culture.
- When the adults in their lives make decisions about their lives, young people need to have a say.
- When leaving the system, they need services that will support them beyond the age of 18.
- They need to be, and are entitled to be, treated with dignity and respect.

## **The Future of the Office of the Children's Advocate**

### **Effective Advocacy Requires Adequate Resources**

As the OCA must comment critically at times on the actions of child and family service providers and government with respect to children, its funding must remain free of other agency, departmental or governmental controls and be guaranteed for a reasonable period of time.

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<sup>7</sup> Trocme, N; Knoke, D & Blackstock, C., (2004) *Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System*. Social Service Review, 78(4), 577-600.

Currently, the OCA submits its yearly budget estimates for review and approval to the Legislative Assembly Management Commission (LAMC), which is mandated through *The Legislative Assembly Management Commission Act*. The Legislative Assembly, to which the OCA is accountable, provides funding.

The level of funding we receive continually challenges us, and we believe that the situation may continue to prove challenging if the demand for advocacy services continues to grow.

In addition to completing case advocacy the OCA has demonstrated that we can complete complex systemic reviews. Clearly, our experience in creating in-depth reports and reviews on areas such as hotel use and emergency shelters has shown there is also a need for such reviews. It is impossible to provide the level of case services and complete in-depth and systemic review within the current resource base.

### **The Children's Advocate Needs Clear, Comprehensive and Adequate Powers**

Currently, the authority of the Children's Advocate is restricted to the child and family services system. The powers of the OCA under current legislation are largely sufficient to accomplish what is commonly referred to as "single target system advocacy." There are, however, areas of deficiencies in current legislation that should be addressed to enhance advocacy efforts.

Perhaps the most serious flaw in current legislation is that the recommendations of the Children's Advocate do not have to be implemented. In the OCA's last three annual reports, the Children's Advocate has pointed out that the DFSH and agencies can ignore the recommendations of the OCA. The OCA has no ability to enforce recommendations or require a response from those who are cited. It also does not have adequate resources to track recommendations.

The OCA has noted since the release of the shelter review that the DFSH and the WCFS branch have made efforts to respond to recommendations both from systemic reviews and case reviews. However, as the CFS system changes and evolves new structures such as the Four Authorities, are in place. The Joint Intake Response Unit will be developed and many agencies and service providers will be involved in providing services throughout Manitoba. It is now more important than ever for the OCA to track its recommendations, both made under systemic reviews and on individual cases.

**New in 2004:** The OCA has undertaken to develop procedural guidelines between the DFSH and the OCA to track recommendations from the OCA on systemic reviews. The process has begun with the EAPD shelter review. It is our hope that this process will eventually be placed in the CFS provincial foundational standards.

Once the procedures are evaluated, fine-tuned and agreed upon, the Children's Advocate would like to see the procedure expanded to the Four Authorities and the larger child and family services system.

This process has only just begun. The task of encouraging the expansion of the process to the larger system will fall to the next Children's Advocate. It is hoped that such a process can begin with the OCA's systemic reviews and eventually include any recommendations made on individual case reviews.

It is also the Children's Advocate's belief that legislation should be amended to strengthen the OCA and such amendments could include the following:

- Should the Children's Advocate undertake an investigation, the Children's Advocate or delegate may examine any person on oath on any matter that the Children's Advocate considers relevant to the investigation, and for that purpose the Children's Advocate or delegate has the powers of a commissioner appointed under Part IV of *The Manitoba Evidence Act*.
- The Children's Advocate should be given the discretion not to investigate complaints, which he/she considers to be frivolous or made in bad faith.

- Currently there is no obligation upon government or service providers to notify children and youth of their right to access the Children's Advocate. Legislation should require that service providers inform the child, youth or other affected family members about the Office of the Children's Advocate.
- Current legislation restricts the investigative ability of the Children's Advocate to the child and family services system. Given that children and youth in the CFS system are, or may be involved with other child caring systems such as Health, Education and Justice, the ability to advise, consult and investigate other government departments would enable the Children's Advocate to effectively advocate for comprehensive services that affect children.

In March 2001 the OCA put forward a conceptual paper to government outlining the need to expand advocacy services to all children and youth. An expanded mandate for the OCA would ensure that there would be an independent body focusing its efforts on ensuring that due consideration is given to the needs, interests and viewpoints of children and youth across all child-serving systems.

### **The Children's Advocate Must Be Accessible In All Parts of Manitoba**

The evolution of the CFS system and creation of the Four Authorities means the responsibility for the protection and provision of services to children and families served by the CFS system is being shifted to their respective communities. The OCA must also be in those communities. It cannot be in those communities with only five advocacy workers who are based in Winnipeg. The OCA requires an enhanced presence in Southern Manitoba and the creation of a visible presence in Northern Manitoba.

In September 2001, the OCA completed a feasibility study entitled *The Need for Children's Advocacy in Northern Manitoba*. Based on the findings gleaned from consultations with community leaders and service providers in northern Manitoba, the study recommended that the OCA establish sub-offices in Northern Manitoba. The Children's Advocate submitted a proposal to the Legislative Assembly Management Commission (LAMC) for funding to enact the recommendations in November 2001. The request was not granted.

### **Final Words on the Future of the OCA**

The ultimate effectiveness of the OCA rests on its ability to "act independently, produce well-researched information, exhibit a credible and respected public presence and to respond effectively to important issues affecting children".<sup>8</sup>

Our experiences over the last six years have clearly demonstrated that being independent, having sufficient resources and comprehensive, adequate powers will always affect our ability to advocate for change for children and youth involved in the child and family services system.

As the end of Janet Mirwaldt's term as Children's Advocate draws to a close we feel that we have been able to establish the OCA as a credible and independent voice for children and youth in the child and family service system. While we have made progress, more needs to be done. It is timely to expand the role of the OCA into other service sectors provided or funded by the provincial government, while enhancing our presence and accessibility to children and youth inside the child and family service system across Manitoba.

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<sup>8</sup> (UNICEF/Innocenti Research Centre, (2001) *Independent Institutions Protecting Children's Rights*, Florence, Italy.)



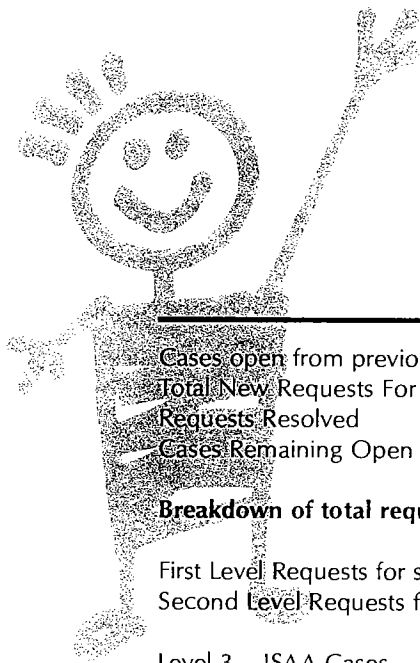


# **Year-end Statistical Analysis of Children's Advocate Cases**

***April 1, 2004 - December 31, 2004***

The new statistical information contained in this section of the annual report covers a nine-month period beginning April 1, 2004 and ending December 31, 2004, rather than the usual 12-month reporting period that would have ended on March 31, 2005.

Reporting upon the entire 12-month period was not possible as the current Children's Advocate's final term ends on March 29, 2005. The nine-month period was selected so that the Children's Advocate could write, research, arrange for French translation, typeset, print and release this annual report prior to the conclusion of her term as Children's Advocate.



	2003-2004	2004
Cases open from previous year	11	174
Total New Requests For Service	2054	1560*
Requests Resolved	1880	1253*
Cases Remaining Open	174	307*
<b>Breakdown of total request for services</b>		
First Level Requests for service	967	658
Second Level Requests for Service	406	369
Level 3 - ISAA Cases	512	254
Level 3 - AI Cases	169**	279**
<b>Total:</b>	<b>2054</b>	<b>1560*</b>

ISAA - Cases where the OCA provided detailed Information and Self-Advocacy Assistance.

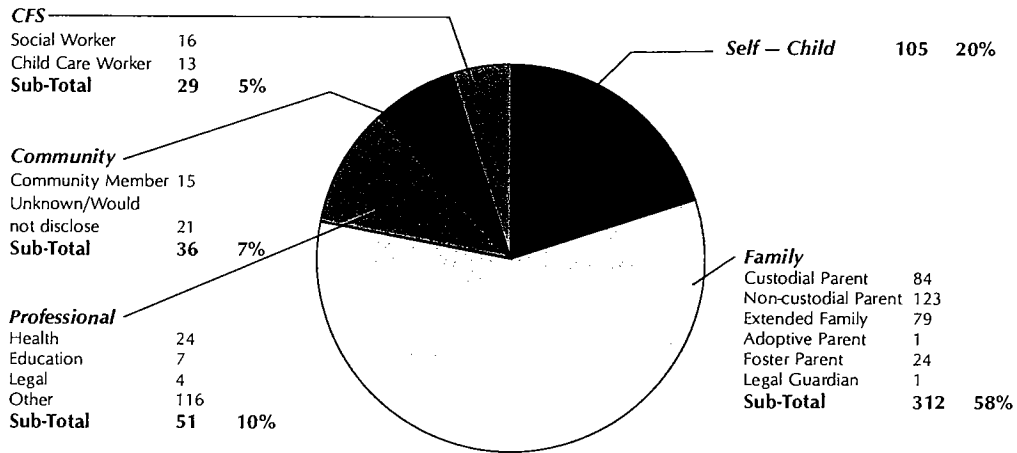
AI - Cases where the OCA provides Advocacy and Intervention on behalf of a child or youth.

Case file numbers do not reflect the total number of children served. Some cases may involve sibling groups but a file is only opened on the oldest sibling.

**\*The number reflects a nine-month period ending December 31, 2004.**

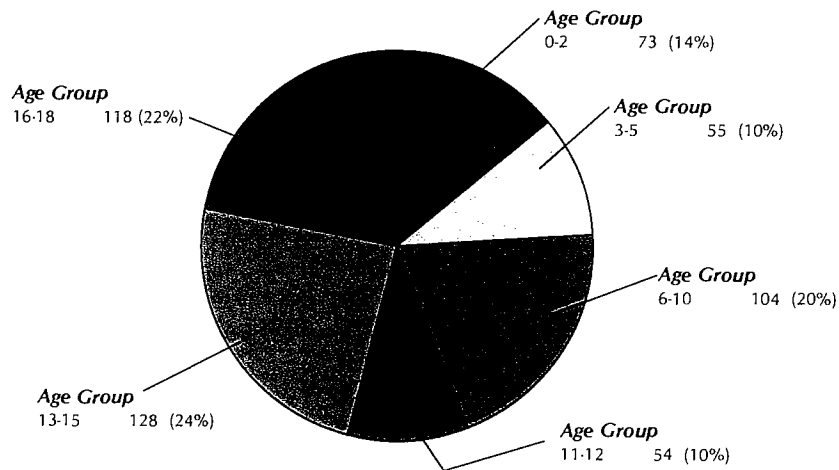
\*\*Does not include 2 CIRC files and 3 Issue files.

**Who Contacted the OCA: (n=533)**



- In 1999-2000 children and youth made up 13% of the referral source by 2005 children and youth made up 20% of our total referral source base. More children and youth are reaching out directly to the OCA for help.

**Child's Age and Gender: (n=533)**



- Each year we serve about equal numbers of males and females. This year we served slightly more female's (272) than male's (257).
- This year we primarily served young adolescents ages 13-15 (24%), older adolescents ages 16-18 (22%) and children 6-10 (19%). Over the last six years we have consistently served these age groups more so than other age groups.
- Over the last six years the OCA served approximately 3672 children and youth.

**Whereabouts of Children/Youth When Advocacy Files were Opened: (n=533)**

Placement Type	Number	Percentage
Parent/Guardian	163	31
Non-Relative Foster Home	143	27
Relative Foster Home	36	7
RH/Shelter	35	6
Group Home	27	5
Residential Facility	26	5
Relative/Friends	23	4
Hotel/Motel	14	3
Place of Safety	8	2
Youth Correctional	9	2
Adoptive Home	5	1
Mental Health	3	-
On Own	19	4
Unknown	18	3
Other	4	-
<b>TOTAL</b>	<b>533</b>	<b>100%</b>

**Case Category/Involvement: (n=533)**

CFS Case Category	Number	Percentage
Adoption	3	1
Post Adoption	1	-
Child in Care	298	56
Protection	156	29
EPS	2	1
VFS	34	6
Previous CFS involvement	-	-
No or current CFS involvement	39	7
<b>Total</b>	<b>533</b>	<b>100%</b>

- 494 or 93% of the cases opened to the OCA had open and active CFS involvement with a CFS agency or regional office.
- 456 or 85% of the cases open to the OCA were open to a CFS agency or regional office as an active protection file prior to requesting advocacy services.
- We are serving more children and youth that are in care. The increase is also reflective of the higher number of youth initiated calls.

**Legal Status of Child: (n=533)**

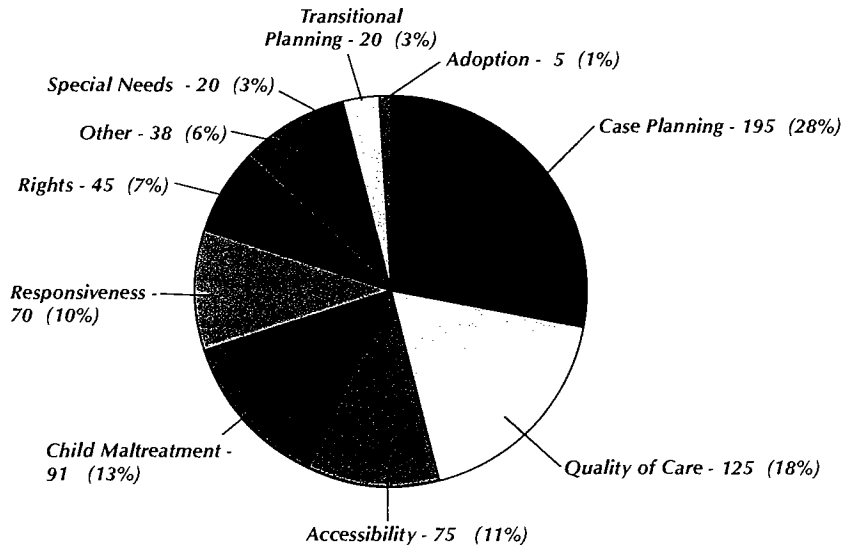
Legal Status	Number	Percentage
No Status	39	7
Non-Care	121	23
Apprehension	110	21
Order of Supervision	2	-
Permanent Ward	116	22
Petition for Further Order	2	-
Support beyond 18	1	-
Temporary Ward	68	13
VPA	75	14
<b>Total</b>	<b>533</b>	<b>100%</b>

- 372 or 70% of the children and youth involved with the OCA were children in care with the CFS system where the system had a legal responsibility over the child.
- Over the last six years the OCA has been primarily involved with children and youth in the care of an agency or regional office living away from parent.

**Why They Called the OCA for Help: Case Themes and Top Concerns:**

Cases may have more than one single issue and could present with multiple issues requiring advocacy services. In 533 cases there were 687 concerns noted.

**Top Issue 2004:**



**Total Issue by Age Category: (n=687)**

Concerns related to children and youth will often vary dependent upon the needs and age of a child or youth.

ISSUE	0-2	3-5	6-10	11-12	13-15	16-18	18+	UK	ST	%
Accessibility	9	4	12	9	23	18	0	0	75	11
Accountability	1	0	0	0	1	1	0	0	3	-
Adoption	2	0	2	0	0	1	0	0	5	1
Case Planning	38	16	39	17	52	32	0	1	195	28
Child Maltreatment	15	11	30	11	16	7	1	0	91	13
Quality of Care	11	7	23	15	40	29	0	0	125	18
Responsiveness	10	7	14	3	21	15	0	0	70	10
Rights	4	5	9	3	16	8	0	0	45	7
Special Needs	3	4	3	3	4	3	0	0	20	3
Transitional Planning	0	0	0	1	3	16	0	0	20	3
Other	4	2	2	6	15	7	1	1	38	6
<b>Total</b>	<b>97</b>	<b>56</b>	<b>134</b>	<b>68</b>	<b>191</b>	<b>137</b>	<b>2</b>	<b>2</b>	<b>687</b>	<b>100%</b>

Case Planning, Quality of Care and Child Maltreatment were the top concerns of 2004-05. Over the last six years these concerns have consistently been the top issues of concern along with Accessibility to Services.

Case Planning speaks to issues arising in an agency or regional office's case plan for the child, youth and family. We typically noted a lack of an individualized case plan for the child, youth or family. As well, we also noted a number of issues that have affected case planning most specifically the lack of child and youth participation in planning.

Quality of care issues were tracked but only for those children in the care of an agency or regional office. These issues included not only the quality of the care provided but also spoke to the lack of appropriate placement resources for children and youth.

Child maltreatment concerns involve allegations that a child or youth is being neglected or abused in the community or while in the care of the CFS system. Such concerns are reported to an agency or regional office for follow up investigation.

Accessibility issues are related to the refusal of services; the lack of services or the ineligibility of a child or youth to receive services.

**Dual Mandate Cases: (n=51)**

<b>Authority</b>	<b>Number</b>	<b>Percentage</b>
Justice	26	51
Education	5	10
Health	2	4
Mental Health	12	23
EIA	3	6
Children's Special Services	1	2
Adult Services	-	
Housing	1	2
Federal Government	1	2
Other	-	
<b>Total</b>	<b>51*</b>	<b>100%</b>

**Dual mandate cases comprise approximately 10% of the total case files opened by the OCA.**

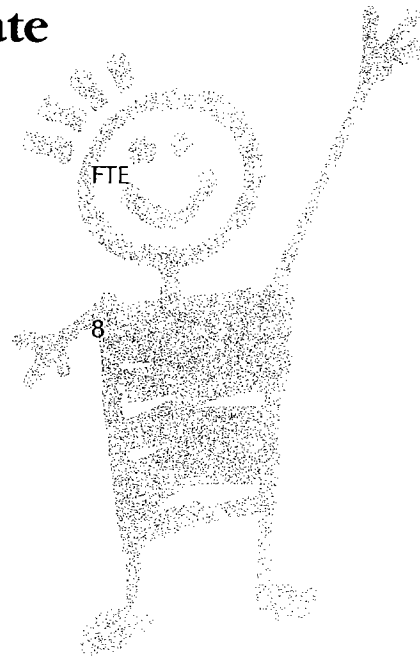
The dual mandate category refers to cases where another child caring system is involved in addition to a CFS agency or regional CFS office.

This year, more than half the dual mandate cases have involved Justice. The majority of these cases fall into the youth criminal justice system. As evidenced in the statistical information we have gathered since tracing dual mandate cases, this pattern is consistent with past years.

**\*Cases up to December 31, 2004**

# The Fiscal Year Budgets for The Office of the Children's Advocate

Expenditures	\$(000)	FTE
<b>2004-2005</b>		
Total Salaries and Employee Benefits	528.9	8
Total Operating Expenses	197.3	



## The Office of the Children's Advocate Staff List

- Janet Mirwaldt, Children's Advocate
- Michael Bear, Deputy Children's Advocate (May 1999 to September 2004)
- Terri Hammerback, Children's Advocacy Officer
- Thelma Morrissette, Children's Advocacy Officer
- Jill Perron, Children's Advocacy Officer (on maternity leave to August 2005)
- Cheryl Fontaine, Advocacy Assessment Officer (November 2003 to June 2004)
- Don Mathieson, Children's Advocacy Officer (September 2004 to July 2005)
- Nelson Mayer, Advocacy Assessment Officer
- Patsy Addis Brown, Office Manager
- Debra Swampy, Administrative Secretary
  
- Crystal Hansen, Social Work Student, Southeast Cohort Program
- Terry McCharles, Intern, Métis Child, Family and Community Services Internship Program



*We all have a hand  
in it!*