

STANDING COMMITTEE ON  
JUSTICE POLICY  
COMITÉ PERMANENT  
DE LA JUSTICE  
Wednesday 25 April 2007 Mercredi 25 avril 2007

PSYCHIATRIC PATIENT  
ADVOCATE OFFICE

**The Chair:** The next presenter is the Psychiatric Patient Advocate Office: David Simpson, acting director. Good morning.

**Mr. David Simpson:** Good morning. Thank you, Mr. Chair and members of the committee. My name is David Simpson, and I'm the acting director of the Psychiatric Patient Advocate Office. I would like to thank the committee for its invitation and for the opportunity to comment on Bill 165.

The Psychiatric Patient Advocate Office is pleased that the government of Ontario is moving forward with their commitment to make the child advocate an independent officer of the Legislature.

Ontarians are at an important place in history, a place that requires them to critically examine their commitment to independent advocacy, to protecting vulnerable populations and to enshrining in law the authority, function and responsibilities of an advocate who is empowered to protect the most vulnerable amongst us.

A progressive society has a responsibility and an ethical and moral obligation to protect those who cannot defend their own rights, who have no voice or who will be at risk because of their vulnerability. An advocate will be the voice of those who have no voice and will ensure that the voice of those who can speak for themselves will be heard. Advocacy done well improves both outcomes and quality of life: truly a benefit to the individual, their family and the community at large.

We want to applaud the government for moving forward in providing protection to vulnerable children and youth. However, we have some concerns with the proposed legislation and how it falls short in establishing the child advocate as a truly independent officer of the Legislature.

First, the definition of "advocacy" should be more broadly stated to ensure that it includes the ability of the advocate to pursue both legal and non-legal advocacy work. The definition should articulate the types of advocacy that will be provided to those who will seek service, including instructed and non-instructed advocacy, systemic advocacy, and supporting self-

advocacy by children and youth. Legal advocacy work is essential if systemic change is to happen across the sector. There may be times when it's appropriate for the advocate to seek intervener status in an inquest, in a case before a tribunal, such as the Human Rights Tribunal of Ontario, or before the Human Rights Commission as a way to promote systemic change. The advocate should not have their hands tied.

Second, the functions of the advocate as proposed in section 13 are too narrow and should be expanded to include providing advocacy and rights protection services to all children in Ontario seeking or receiving government services, not just those outlined in section 13. Let me repeat again that we must ensure that no child is left behind and therefore section 13 should be expanded to include providing advocacy and rights protection services to all children in Ontario seeking or receiving government services. By narrowing the functions of the advocate, some of the most vulnerable children will not be afforded the protection of the advocate. Parents and guardians should be able to utilize the services of the advocate, and the advocate, where appropriate, should be able to consider third party complaints.

Third, section 14 should be expanded to allow the child advocate the power to summon witnesses to provide testimony or to produce records. Although these powers would not be frequently utilized, they are necessary to ensure the co-operation of all parties. The advocate must have more than just moral authority or the power of persuasion. She must be given the authority to monitor and enforce compliance.

As an officer of the Legislature, the advocate should not have to "give reasonable notice," as proposed in subsection 14(4), to the person in charge of the place that has custody or control of the child or youth should they wish to communicate with them or enter the place where they are residing. Such limits on the advocate's ability to do his or her job are both restrictive and unreasonable. The advocate should have free, immediate and unimpeded access to children and youth.

Subsection 14(6) should also be amended to grant the power of reconsideration to the advocate for children and youth who wish to appeal a decision by the advocate not to investigate their complaints. Additionally, timelines should be defined for any appeal or reconsideration process adopted by this committee.

Section 15 should be removed from the proposed legislation, as it will tie the hands of the advocate as an independent officer of the legislature. The advocate should not be required by law to advise the minister or the appropriate administrative head of the affected entity of his or her intention to conduct a systemic review, nor should the advocate be required by law to consult with the minister or administrative head before forming a final opinion on the subject matter of a systemic review.

Subsection 19(4) also requires the advocate to deliver a copy of the annual report or any other report to the minister of any ministry to which it is relevant at least 30 days before delivering it to the Speaker. All of these provisions unduly fetter the ability of the advocate to act independently and are at odds with both the intent and the purpose of Bill 165.

**1140**

We would also like to suggest that this bill be amended to include two other significant abilities. First, the advocate should have the authority to establish an advisory committee comprised of children, youth, families and service providers to offer advice and critique the work of the advocate. Second, the advocate should have the authority to establish any subcommittees or expert panels deemed necessary to address specific rights and entitlement issues faced by children and youth.

This bill is also silent on penalties for non-compliance for those who choose to violate the law or its intent. We submit that a section pertaining to penalties be added that is similar to section 27 of the Ombudsman Act. This section makes it an offence to wilfully obstruct, resist, make false statements or refuse to comply with a lawful requirement of the Ombudsman. These offences permit a fine of not more than \$500 or imprisonment for a term of not more than three months, or both. Without establishing penalties for non-compliance, children and youth may well be subject to continued abuse, neglect or rights violations, despite the work of the advocate.

Before concluding, I would like to say a few words about history and the roads less travelled.

In the mid-1990s, Ontario started down this road we are on today with the formation of the Ontario Advocacy Commission, which was, sadly, disbanded in 1996, before it could truly begin its work. We now have an opportunity to begin the broader discussion again. Perhaps the time has come to revisit the role of government in protecting its vulnerable citizens wherever they are.

In conclusion, the people of Ontario, through their elected representatives, must decide what type of advocacy they want for vulnerable people. Today our job is to create a mechanism to protect Ontario's vulnerable children and youth. Perhaps tomorrow we will be looking once more to developing a strategy for protecting all vulnerable populations.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Simpson. We have about one minute per party. We'll start with the PC Party this time.

**Mrs. Elliott:** Thank you very much for your comments, Mr. Simpson. I totally agree with you that to have a truly meaningful child advocate, the abilities need to be expanded beyond the scope of what's presently provided for.

In the interests of time, I just had one question with respect to expanding the definition of "advocacy" to legal and non-legal functions. My question is how that interacts with the Office of the Children's Lawyer and whether you've examined that as to the roles that they would play if the children's advocate were to expand into legal advocacy per se.

**Mr. Simpson:** When I was talking legal advocacy there, I was thinking more about doing work around legislation, policy, intervening in inquests or before tribunals, to really put forward the position of all children and youth in Ontario, not just that one particular case. It's not clear to me from this bill if in fact those things will be allowed under Bill 165. So I guess

we're saying that there's a role for both legal and non-legal advocacy and that the child advocate's hands should not be tied; they should be able to use the tools necessary to do the job that they need to do.

**Mrs. Elliott:** Thank you. I was just wondering, Mr. Chair, if it would be possible for Mr. Fenson, if he wouldn't mind, to give us some information with respect to the work that is presently done by the Office of the Children's Lawyer so that we can sort of take a look at what could be expanded into in terms of legal advocacy by the child advocate.

**The Chair:** Thank you, Mrs. Elliott. We'll move on to the NDP.

**Ms. Horwath:** I too appreciate your comments. I think you've made some excellent suggestions on improvements to the bill. I'm glad you raised the issue of the 30 days that ministers have to hold onto a report before it gets released. In my first attempt at debating this in second reading, I called it the government spin cycle, the 30 days that they have between the time they have the report and it becomes public. I think it's inappropriate. No other officer of the Legislature has that requirement, that 30 days be given to any ministry where there's a report that's about to be brought forward to the public. So I don't think it belongs here and I'm glad you've indicated that in writing. I want to thank you for that, because I think it's an important issue. We need to make sure that there is true independence of the child advocate and that it's not reduced by this 30-day opportunity for the government to alter or in some way change the perception of what's being presented in an independent report.

Mr. Chair, on the very last page of the presentation there is a remark about the office of the child advocate having the lowest budget per capita in Canada. Can I just ask that Mr. Fenson as well give us the comparator of the per capita expenditures across the country in child advocate offices? I'd appreciate that.

**The Chair:** Okay, thank you.

We'll move on to the Liberal Party. Any questions?

**Mrs. Van Bommel:** Thank you very much for your presentation. In your recommendations you talk about permitting parents and guardians to utilize the services of the advocate. Could you expand quickly on what you mean by that?

**Mr. Simpson:** Sure. You'll notice that we also recommended the ability to take third party complaints. You may have children and youth in a group home setting where an older child sees that a younger child is being abused or that something is happening that's not quite right. There is no mechanism in this bill to say that the child advocate can in fact accept a third party complaint and, likewise, if you were to follow our recommendation, that all children in Ontario seeking or receiving government services could utilize the services of the child advocate office. That could mean that some very young children may need a parent or guardian to be their voice to make that initial contact with the child advocate's office so that an investigation or a review could be conducted.

**The Chair:** Thank you, Mr. Simpson, for your presentation today.