



Ministry of
Children and Family
Development

The Complaints Policy: Administrative Review

PRACTICE GUIDELINES

October 2012

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The Complaints Policy: Administrative Review

INTRODUCTION

The Administrative Review Practice Guidelines support Review Authorities and Complaints Specialists (CS) in conducting Administrative Reviews. These guidelines will also be informative for other Ministry of Children and Family Development (MCFD) and Delegated Aboriginal Agency (DAA) staff. This document should be read together with the Complaints Policy.

The complaints process is a formal mechanism which ensures that children, youth and families who receive services or believe themselves eligible to receive services from the MCFD or DAAs have an opportunity to express their concerns. MCFD and DAAs strives to solve the majority of complaints through Resolution, however some complainants will request an Administrative Review.

Administrative Review is distinct from Resolution. The Administrative Review provides an examination of the complaint issues by an uninvolved Review Authority (RA), who reviews relevant information, draws conclusions and may make recommendations. At the request of the complainant, the RA may refer a complainant back to Resolution, but they do not undertake Resolution themselves.

ESSENTIAL ELEMENTS OF ADMINISTRATIVE REVIEW

The Complaints Policy and guidelines are intended to provide enough flexibility to allow Administrative Review to be tailored to meet the unique needs of Delegated Aboriginal Agencies and the people they serve; geographically and culturally diverse regions; and service areas with different mandates. The process of the Administrative Review may vary, but within the process the essential elements remain intact.

These elements are:

- The Administrative Review is completed within 30 days of the request for a review.
- The RA is not involved with the matters subject to the complaint.
- The complainant has the right to be heard by the RA.
- The RA reviews all relevant information.
- When the issues in a complaint concern them, the views of children/ youth are heard and considered by the RA.
- MCFD and DAA staff have a right to know when a complaint concerns their decisions, or actions and to provide the RA with a response to the concerns.
- The RA provides a written conclusion, and recommendations with an explanation which links the evidence considered by the RA to the conclusion and recommendations.
- Complainants will not experience any negative consequences as a result of making a complaint or requesting an Administrative Review.

THE REVIEW AUTHORITY

Each region, program area, and DAA has people who have will act as review authorities for Administrative Review. The CS designates an uninvolved person, from among those selected for their region, program area or DAA, to conduct the Administrative Review. The RA designation will be documented, including:

- The name of the CS;
- the date of the designation;
- the name of the designated RA.

To ensure consistency, the person who begins the Administrative Review must complete the review. If circumstances arise which prevent this, a new RA will be designated and the new RA must complete all the essential elements of the Administrative Review, even if the work of the previous RA is being repeated. The 30 day timeline from the date the review was requested stands, unless the complainant agrees to an extension of the timeline.

REQUEST FOR AN ADMINISTRATIVE REVIEW

Once a complaint has been accepted, the CS reviews the options for Resolution or Administrative Review with the complainant and the complainant decides whether to engage in Resolution or request an Administrative Review. It is the complainant's right to request an Administrative Review at any point, even during Resolution. The Administrative Review must be concluded within 30 days of the request to the CS for an Administrative Review.

When the request is made, the CS explains the Administrative Review process to the complainant. The complainant is advised that once an Administrative Review has been concluded, the complaint will be closed and will not be reconsidered within the MCFD/DAA complaint process. If the complainant is dissatisfied with the conclusion or recommendations of the Administrative Review, the complainant can contact the BC Ombudsperson, RCY or other external review bodies.

TIMEFRAME FOR THE ADMINISTRATIVE REVIEW

The Administrative Review must be completed within 30 days of the CS receiving a request for the review, unless the complainant and the RA agree to an extension.

If it appears at any point that the Administrative Review will not be completed within 30 days, the RA should discuss an extension with the complainant as soon as possible.

Circumstances that could lead to an extension include:

- The complainant is not available because of travel, illness or other commitments.
- The complainant has been difficult to reach and this has caused delay in the Administrative Review.
- Time is needed to find out the views of the child or youth.
- The matter is complex and requires extensive research by the RA.
- Other similar circumstances arise.

The complainant will be sent a letter confirming any agreed extensions.

If the Administrative Review will not be completed within 30 days and an extension is not agreed, a letter is sent advising the complainant that the Administrative Review is

not going to be completed in time and the expected date of completion. This letter to the complainant is sent to provide information in a respectful manner, it does not unilaterally extend the timelines. In these cases, the Administrative Review will be completed outside of the required timeframe.

DECISION NOT TO PROCEED WITH ADMINISTRATIVE REVIEW

During the complaints process, circumstances can change. The RA may decide not to proceed with the Administrative Review if:

- The child/ youth, young adult or complainant does not want to proceed with Administrative Review; or,
- The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
- The matter is eligible for a review panel hearing under the Mental Health Act; or
- The matter is eligible for a review under another enactment or regulation other than the Ombudsperson's Act; or
- The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the Youth Criminal Justice Act; or
- The matter is eligible for a foster parent review or appeal.

The decision not to proceed is documented and the complainant is notified in writing within 7 days of the decision not to proceed and the reasons for the decision.

THE ADMINISTRATIVE REVIEW

In this section, the steps in an Administrative Review are laid out sequentially. It is possible that these steps can be carried out in a different order, or in parallel, depending upon the situation. But the steps in each stage should be completed before the next stage of the AR process begins.

The CS may support the RA with some tasks, but the essential elements of the Administrative Review must be maintained. In some cases the RA will complete all of the tasks.

Stage 1: Preparation/Initial steps

The first stage of the Administrative Review must be completed as soon as possible to meet the 30 day timeline for completion.

1. The CS receives the request for the Administrative Review and designates an uninvolved person as the RA within one business day of receiving the request.

Uninvolved means that the person to be designated as the RA:

- has no involvement in the actions or decision making related to the complaint issues.
- has no supervisory relationship with staff who have been involved in the actions or decision making related to the complaint issues.
- has no personal relationship with the complainant or other people involved in the complaint.

- has no recent professional relationship with the complainant or other people involved in the complaint. If there was a professional relationship in the past, consider whether there could be any appearance of bias for or against the complainant. Secure the complainant's and involved manager's consent before the person is designated as the RA or designate another person as the RA.

2. The CS provides the RA with an outline of the complaint in writing, including:

- the complaint issues to be addressed in the Administrative Review;
- the remedy the complainant is seeking;
- information on any advocate who is acting for the complainant;
- staff and/or others whom the complainant believes can provide information; and
- documents, policy or other material which the complainant would like the RA to consider.

3. The CS sends the complainant a letter:

- confirming the date the complainant request for an Administrative Review was received;
- providing information on the Administrative Review process;
- identifying the RA;
- providing the written outline of the complaint; and
- inviting them to contact the RA to clarify or correct any information in the written outline.

In some cases, an Administrative Review will be requested when the complaint is first made, if this is the case, one letter can address the acceptance of the complaint and the details related to the Administrative Review request listed above.

4. The CS considers whether the complaint issues require reporting to police, RCMP, child protection staff, or consulting with Human Resource staff regarding personnel matters. When the believes such a report may be required:
 - The CS should consult with their supervisor and/or the RA in situation.
 - Where appropriate, the CS should advise the complainant that a report to police, RCMP or child protection staff is required and should encourage the complainant to make these reports.

These steps must not delay a timely report.

5. Throughout the Administrative Review, information access and sharing will be undertaken in a manner consistent with relevant legislation. The CS will secure required informed written consent from the relevant parties before information is accessed or shared. For example, if the complainant is relying on information from a physician, written informed consent must be in place before the physician is contacted by the CS or RA. If the consent is not provided, the Administrative Review can proceed, and the Administrative Review report will outline what information is missing, and how the lack of that information impacts the analysis and conclusions.

6. If the complaint concerns the decisions, actions or work of an MCFD or DAA staff, the written outline of the complaint issues is provided to the involved staff person's manager or team leader with a request for a written response including a list of any relevant file information or material the involved staff recommends be reviewed for the Administrative Review.
 - If the involved manager or TL is not available, the CS may contact the staff person directly to avoid delays.
 - If Human Resources have been involved, they should be consulted before contacting the involved staff.
7. The involved staff provides a written response to the concerns; any file information or documents requested or that the staff person believes are relevant to the complaint issues within 2 days of the request.
8. The CS gathers documents including file material, policy, and standards, which the complainant, the MCFD/DAA involved staff person and the RA have deemed relevant to the RA. The CS can:
 - review the material and prepare a summary of the facts contained in the documents.
 - Prepare a list of the material for the Administrative Review report.
9. The CS can arrange meetings with the complainant, the child/youth subject to the complaint and any other person to whom the RA needs to speak.

Stage 2: The Review Authority Conducts the Administrative Review

1. The RA reviews:

- the complaint issues;
 - the remedy sought;
 - the response by involved staff;
 - file material, policy, standards, legislation ;
 - information about available relevant resources and services; and
 - additional material as needed.
2. The complainant has the right to be heard by the RA. This could be in writing, but in most cases, the complainant will have the opportunity to discuss their concerns directly with the RA. This is an opportunity for the complainant to express their concerns directly to the RA and for the RA to clarify the complaint issues. The RA may include any issues or material suggested verbally by the complainant in the Administrative Review. If the complainant chooses not to speak to the RA, the Administrative Review will still proceed on the basis of the written complaint, unless the complainant requests that it be discontinued.
3. The RA must make reasonable efforts to determine the views of any child or youth who is subject to the complaint.
- With the permission of the child's legal guardian, the RA will speak directly to the child or youth in person, when possible, and by telephone or other electronic means as appropriate;
 - At times it will not be possible to communicate directly with the child/youth or young adult either because the child/youth's legal guardian does not consent; child/youth or young adult cannot, or does

not want to communicate their views to the RA; or for any other reason it is not in the child/youth's best interest to communicate directly. In these cases, the RA determines the child/youth or young adult's views through a person or persons whom the RA is confident accurately represents the child/ youth or young adult's views.

4. The legal guardian of the child/youth is a Director under the *CFCSA*, the Director will grant permission for the RA to speak to the child/youth, unless, in the view of the legal guardian, it is not in the child/youth's best interest to do so.
5. With required written informed consent, the RA speaks to any other person who the RA believes may provide relevant information about the complaint.
6. The RA assesses all of the information and considers whether additional information is necessary to come to a conclusion and make recommendations. The RA should consider the principles of administrative fairness in determining whether there is adequate information. For example, is there information regarding cultural components; advocacy support; the involved staffs' legal authority to act; etc.

Stage 3: Analysis of information

1. The RA first considers the complaints issues, the views of the child /youth or young adult, the response by involved staff, and any other material in determining whether the actions and decisions related to MCFD/DAA services were consistent with relevant legislation, policy, procedures and the principles of administrative fairness..

2. The RA draws a conclusion based on the information reviewed.
 - a. If the decisions/actions **were** consistent with the above, the RA then considers whether there were other decisions and/or actions which were also consistent with legislation, policy, and procedures and possible within existing resource allocations, which were more consistent with the desired remedy of the complainant and the views of the child/ youth or young adult. These alternatives may form the recommendations in the Administrative Review report
 - b. If the decisions/actions were not consistent with relevant legislation, policy, procedures and the principles of administrative fairness, the RA will bring this immediately to the attention of the involved director. The RA may consider what actions, decision are consistent with legislation, policy, procedures, the desired remedy of the complainant, the views of the child/ youth or young adult and possible within existing resource allocations. The RA may recommend that the director implement specific decision and/or actions; or the RA may recommend that the decisions be reconsidered by the involved director. These recommendations are included in the Administrative Review report.

The RA may draw different conclusions and make different recommendations for different complaint issues.

Stage 4: Writing the Administrative Review Report

Background material prepared by the CS can assist the RA to write the Administrative Review report, however the analysis, conclusion and recommendations must be developed by the RA.

1. The Administrative Review report is written and includes:
 - a. the complaint issues;
 - b. Information considered
 - i. the views of the subject child/ youth or young adult (if applicable);
and
 - ii. legislation, policy, procedures, resource implications and other information considered in the conclusion and recommendations.
 - c. Conclusion and Recommendations
 - i. The report states clearly whether the decisions or actions of MCFD/DAA staff are consistent with legislation, policy and procedures and details any recommended actions to be taken by MCFD/DAA staff or managers.
 - d. The report concludes with information to the complainant on the role of the RCY, Office of the Ombudsperson other external review bodies and the complainant's right to contact them for any further review.

Stage 5: Closing the Administrative Review

1. The Administrative Review report is provided to the :
 - a. complainant,

- b. child/ youth or young person who is the subject of the complaint, unless it is not in the child's or youth's best interest to receive the Administrative Review report.
 - c. director of the program area,
 - d. director of quality service (where applicable), and
 - e. involved staff through their manager or team leader.
2. It is the responsibility of the director of the program area to decide what recommendations will be accepted and implemented and to track these recommendations.
3. No further complaints on the same issues will be accepted to the MCFD/DAA complaints process. This includes a complaint concerning the director's actions on the recommendations.

Program Area: Quality Assurance Ministry of Children and Family Development	Policy
Effective Date: October 15, 2012	Policy Number or Section:
Amendment Date:	

COMPLAINTS POLICY

Policy Statement

1. The complaints resolution and administrative review process is accessible and adheres to the principles of administrative fairness.

Outcome

- The issues underlying complaints received are addressed.
- Anyone who wants to make a complaint can easily access the complaints process.
- Complainants and advocates are treated respectfully during the complaints process.

Standards

- 1.1 Information about the right to make a complaint and about the complaints process is available to anyone.
- 1.2 Complaints can be made to any MCFD or Delegated Aboriginal Agency (DAA) staff person.
- 1.3 Complaints are assessed for acceptance using the criteria in policy.
- 1.4 The decision whether a complaint is accepted or not is documented and written reasons for the decision are sent to the complainant within 7 days of receiving the complaint.
- 1.5 Complaints are documented and tracked.

Procedures

Receiving a complaint

- When a complaint is made to a staff person, the complainant's concerns and contact details are forwarded to the complaints specialist and the complainant is provided with information on how to contact the complaints specialist directly.
- The complaints specialist makes every effort to contact the complainant as soon as possible.

Criteria for accepting or not accepting a complaint

- Complaints are accepted when they are about a decision, act, or failure to act related to a MCFD service or delegated services provided pursuant to the *CFCSA* by a delegated Aboriginal Agency (DAA).
- Complaints are accepted from:
 - anyone who receives MCFD services or DAA delegated services or who believes they should receive MCFD services or DAA delegated services;
 - a person representing anyone who receives MCFD services or DAA delegated services or who believes they should receive MCFD services or DAA delegated services; and
 - The Representative for Children and Youth (RCY).

A complaint may not be accepted if:

- The child/ youth, young adult or complainant does not want to proceed with the complaint; or,
- The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
- The matter is eligible for a review panel hearing under the *Mental Health Act*; or
- The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson Act*; or
- The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the *Youth Criminal Justice Act*; or
- The matter is eligible for a foster parent review or appeal.
- The decision to accept or not accept a complaint is documented.

Notification Regarding Acceptance

- The complainant is told as soon as possible in person, or by phone, whether or not the complaint is accepted.
- If the complaint is accepted, the complainant is sent a letter within 7 days of the complaints specialist receiving the complaint that accepts the complaint, outlines the issues identified, and describes the complaints process.
- If the complaint is not accepted, the complainant is sent a letter within 7 days of the receipt of the complaint that provides the reasons why the complaint is not accepted and describes the options for external reviews.

Options for Resolution or Administrative Review

- The complainant may choose to participate in resolution or request an administrative review.
- The complaints specialist discusses with the complainant the options for resolution or administrative review and provides details and benefits of each process.
- The 30 day time frame for resolution and administrative review begins when the complainant advises the complaints specialist which option is chosen. The complaints specialist documents the date and which approach the complainant wishes to use.
- The complaints specialist advises the involved staff of the complaint as appropriate.

Decision Not to Proceed with a Complaint

- Circumstances can change during a complaints process. It may be decided not to proceed with a complaint if:
 - The child/ youth, young adult or complainant does not want to proceed with the complaint; or,
 - The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
 - The matter is eligible for a review panel hearing under the *Mental Health Act*; or
 - The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson Act*; or
 - The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the *Youth Criminal Justice Act*; or
 - The matter is eligible for a foster parent review or appeal.
- The decision not to proceed with resolution is made by the complaints specialist.
- The decision not to proceed with an administrative review is made by the review authority.

- The decision not to proceed with a complaint is documented and the complainant is notified in writing within 7 days of the decision not to proceed and the reasons for the decision.

Misconduct, Criminal Conduct and Child Safety Concerns

- Where the complaint concerns allegations of negligence or misconduct on the part of an employee, an investigation must occur that is separate and apart from the complaints process and consistent with any relevant legislation, collective agreements, and personnel policies.
- When a complaint concerns allegations of criminal conduct, the matter will be reported to the appropriate police force or Royal Canadian Mounted Police detachment.
- When the complaint raises child protection concerns, the matter will be reported to the appropriate child protection staff.
- Despite reporting matters to police, child protection staff or personnel staff, the complainant may still want to proceed with resolution or administrative review of the complaint concerns. The complaints process will be conducted in a manner which does not interfere with criminal or child protection investigations or with personnel processes.

Policy Statement

2. The importance of advocates in supporting complainants to access the complaints process, identify complaint issues, and to express their views is recognized.

Outcome

- Complainants feel supported to involve advocates in the complaints process.
- The views of complainants are heard and understood.

Standards

- 2.1 An advocate participates in the complaints process with the agreement of the complainant.
- 2.2 The complainant provides informed written consent to share specific and legally permissible information with the advocate. (Note that the *Youth Criminal Justice Act* has specific provisions regarding access to and disclosure of information which does not permit a complainant to give consent for access to and disclosure of information, and which restricts subsequent disclosure of information.)
- 2.3 A complainant's advocate is treated with respect.

Procedures

- Information is shared or not shared according to the *Freedom of Information and Protection of Privacy Act*; the *Youth Justice Act*; the *Youth Criminal Justice Act*; the *Child Family and Community Service Act*, and other relevant acts and regulations.
- Ministry and DAA staff will provide information about advocates and assist the complainant to access an advocate if requested.
- An advocate can initiate a complaint with the ministry. After receiving the complaint information, the complaints specialist will contact the complainant and confirm the advocate is acting for the complainant.
- The RCY can make a complaint in her own right, or can provide advocacy support to young people. The complaint specialist will clarify with the RCY what role is being taken when the RCY is involved.
- The complaints specialist, advocate and complainant will agree on how they will communicate with each other during the complaints process. For example, the complainant may request that the advocate is the only point of contact for the complaints specialist.

Policy Statement

3. Resolution is an opportunity to solve complaints issues close to the local level.

Outcome

- Complainants experience timely solutions to the underlying issues in their complaints.
- Helping relationships are sustained or enhanced.
- Most complaints are solved through resolution.

Standards

- 3.1 The resolution phase of the complaints process is completed within 30 days of the complainant choosing resolution, unless there is agreement between the complainant and the ministry that the timeline be extended.
- 3.2 Within 7 days of completing the resolution, a letter describing the outcomes is sent to the complainant.

Procedures

Resolution Phase

- When the complainant chooses resolution, the complaints specialist advises involved staff of the complaint details and whether there is an advocate.
- The involved staff contacts the complainant and/or advocate as soon as possible to acknowledge the complaint and confirm the complainant's issues, and to initiate resolution.
- Involved staff make every effort to resolve the complainant's issues during resolution.
- The complaints specialist can assist with resolution by providing facilitation, or other supports as required.

Decision Not to Proceed with Resolution

- Circumstances can change during the complaints process. It may be decided not to proceed with resolution if:
 - The child/youth, young adult or complainant does not want to proceed with resolution; or,
 - The matter is before the courts or the remedy sought would conflict with an

- order or decision of the court; or,
 - The matter is eligible for a review panel hearing under the *Mental Health Act*; or
 - The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson Act*; or
 - The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the *Youth Criminal Justice Act*; or
 - The matter is eligible for a foster parent review or appeal.
- The decision not to proceed with resolution is made by the complaints specialist.
- The decision not to proceed with resolution is documented and the complainant is notified in writing within 7 days of the decision not to proceed and the reasons for the decision.

Resolution Timelines

- An extension of a specified period of time can be agreed by the complainant and the ministry. There can be more than one extension.
- Resolution ends when:
 - the complaint is resolved to the satisfaction of the complainant; or
 - the 30 day period for resolution ends without an agreement or an extension; or
 - the complainant requests an administrative review.
- Resolution phase is complete when a letter is sent to the complainant outlining the outcome, including any agreements and actions to be taken and the complainant's right to request an administrative review of the matter.

Policy Statement

4. An administrative review provides an examination of the complaint issues by a review authority, who has not been involved in matters related to the complaint.

Outcome

- Upon request, complainants have their complaints reviewed and decided by an uninvolved review authority.

Standards

- 4.1 Complainants can request an administrative review at any point in the complaints process.
- 4.2 The administrative review is complete within 30 days of the request for an administrative review unless the complainant agrees to an extension.
- 4.3 Complainants and the relevant staff are advised of the administrative review conclusions and recommendations in writing within 7 days of the decision.

Procedures

Request for an Administrative Review

- The complaints specialist:
 - receives and documents the request for an administrative review, including the issues identified by the complainant,
 - designates an uninvolved person to be the review authority for the administrative review, and
 - provides the review authority with details of the administrative review request.

Uninvolved Review Authority

- A person will not conduct an administrative review for any complaint in which the person has been directly involved; has been in a position responsible for making or overseeing decisions made with respect to the complaint.

Conducting the Administrative Review

- The review authority bases the administrative review conclusions and recommendations on relevant information:
 - provided by the child/youth, or young adult, complainant, advocate, staff, or others as required; and
 - contained in files, letters, emails, and other documents.

Decision Not to Proceed with a Complaint

- Circumstances can change during a complaints process. It may be decided not to proceed with the administrative review if:
 - The child/youth, young adult or complainant does not want to proceed with the administrative review; or,
 - The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
 - The matter is eligible for a review panel hearing under the *Mental Health Act*; or
 - The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson Act*; or
 - The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the *Youth Criminal Justice Act*; or
 - The matter is eligible for a foster parent review or appeal.
- The decision not to proceed with an administrative review is made by the review authority.
- The decision not to proceed with a complaint is documented and the complainant is notified in writing within 7 days of the decision not to proceed and the reasons for the decision.

Administrative Review Phase Timelines

- The administrative review is completed within 30 days of the request for an administrative review, unless an extension of a specified period of time can be agreed by the complainant and review authority. The agreement can be renewed.

Requesting Resolution after an Administrative Review has Begun

- At any point before an administrative review ends, the complainant may decide to move to resolution.
- If the complainant decides to participate in resolution after an administrative review has begun, the administrative review is ended, without a conclusion or recommendations, on the date of the complainant's request and the resolution timeline begins.

- If the complainant subsequently makes a new request for an administrative review, the initial administrative review is reinstated. The reinstated administrative review is completed within 30 days of this new request unless the complainant and review authority agree to an extension.

Administrative Review Conclusions and Recommendations

- In arriving at a conclusion, the review authority must consider:
 - the information the review authority reviewed including relevant legislation and regulations, policies and procedures, interviews with relevant people, and
 - available resources.
- At the conclusion of the administrative review, the review authority can make recommendations provided that the recommendations can legally be done in the circumstances under review.
- The complainant and relevant staff are advised as soon as possible of the review authority's conclusion and any recommendations.
- The review authority sends a letter to the complainant; child/youth or young adult who is the subject of the review, unless it is not in the child/youth or young adult's best interest to receive the letter; and to the relevant staff within 7 days of the conclusion of the administrative review advising them of the review authority's conclusions, and any recommendations. The letter also summarizes the information considered, reason for the conclusions and any recommendations, and provides the options for external review.
- Once the administrative review is concluded, the complaint issues will not be addressed further within the complaints process. The complainant may have options for external review.

References (Relevant legislation, other policies, standards, literature)

Legislation Applicable to all Program Areas:

Freedom of Information and Protection of Privacy Act

Representative for Children and Youth Act

Legislation and Selected Regulations Applicable to Specific Program Areas:

Child Welfare; Child and Youth with Special Needs; Child and Youth Mental Health

Adoption Act

Adoption Agency Regulations

Child, Family, and Community Service Act

Child, Family, and Community Service Act Regulation

Mental Health Act

Mental Health Regulation

Forensic Psychiatry Act

Child Care Programs and Services

Child Care Subsidy Act

Child Care Subsidy Regulation

Community Care and Assisted Living Act

Child Care Licensing Regulation

Youth Justice

Youth Justice Act

Youth Criminal Justice Act

Youth Custody Regulation

Policies:

Advocacy Protocol between MCFD and the RCY

Presumption in Favour of Collaborative Decision Making

Other Information:

Child Rights in Practice: Practitioner Resource (January 2012) MCFD

Hearing the Voices of Children and Youth (January 2010) Ombudsperson and Representative for Children and Youth Report

UN Conventions:

United Nations Convention on the Rights of the Child

United Nations Convention on the Rights of Persons with Disabilities

United Nations Declaration on the Rights of Indigenous Peoples



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The Complaints Policy

PRACTICE GUIDELINES

September 2013

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INTRODUCTION

These guidelines support MCFD and DAA staff, complaints specialists and review authorities to ensure that the complaints process is accessible, fair and empowering. This document should be read together with the *Complaints Policy* (October 2012), the *Responding to Complaints from Children and Youth Guidelines* (October 2012) and the *Administrative Review Guidelines* (October 2012).

The Complaints Policy applies to most MCFD services across the province, to all program areas and to delegated services provided by Delegated Aboriginal Agencies (DAAs).

In the course of working together, disagreements may arise between the client and DAA or MCFD staff. Most issues are addressed directly by staff without a formal complaint being made. However, when this is not possible to solve a disagreement, the complaints process provides a mechanism for people to express their concerns.

The Complaints Policy provides for Resolution and administrative review to address eligible complaint issues.

Resolution is an opportunity for the complainant to actively engage in a solution focused process with staff involved in providing service to the complainant. Administrative review provides an examination of the complaint issues by an uninvolved review authority (RA) who will review relevant information, draw conclusions and may make recommendations.

Once a complaint is accepted as eligible, the complainant may choose between Resolution and administrative review. MCFD and DAAs strive to solve the majority of complaints through Resolution but it is the complainant's right to request administrative review.

THE COMPLAINTS POLICY GUIDELINES

The Complaints Policy and these guidelines are intended to provide enough flexibility to meet the unique needs of:

- delegated Aboriginal Agencies and the people they serve.
- geographically and culturally diverse regions.
- program areas with different mandates and governing legislation.

To achieve consistency in how complaints are received and addressed, it is essential that the standards in the policy are met. These guidelines are intended to provide further support in meeting these standards but the guidelines are not prescriptive.

POLICY STATEMENT 1

THE COMPLAINTS RESOLUTION AND ADMINISTRATIVE REVIEW PROCESS IS ACCESSIBLE AND ADHERES TO THE PRINCIPLES OF ADMINISTRATIVE FAIRNESS.

Complaints Policy (October 2012)

This policy statement addresses:

- informing the public and clients about the Complaints Policy,
- receiving complaints,
- accepting or not accepting complaints,
- deciding not to proceed with a complaint, and
- the complainant's choice whether to engage in Resolution or request an administrative review.

Informing People about the Complaints Policy

- Information about the complaints process is available to anyone through material on the internet or by asking MCFD/DAA staff.
- People requesting services must be given information about the Complaints Policy and those receiving services must be reminded of the policy from time to time. This can be done verbally and reinforced with a brochure or other written information.
- It is important to provide written material so that people have the information to review and keep on hand for future reference.
- Written material can be in the form of a pamphlet, an information sheet, a card with contact details for the complaints specialists (CS) and internet links. Material is available on the intranet for staff and the internet for the public.

Pamphlets, handouts, posters can be developed by Delegated Aboriginal Agencies to reflect the unique cultures of the communities they serve and make community members feel more comfortable about bringing concerns forward.

Keeping People Informed

- People need to be told about decisions that affect them in a manner they can understand.
- Throughout the complaint process, those who are impacted by the complaint process are informed about decisions and then provided with written information about the

decision. This includes complainants, child/youth who are the subject of a complaint and involved staff.

- Direct communication (verbal or signing for example) allows for immediate feedback to confirm that people understand the information provided.
- Written information (letter or report) ensures that people have a written record of the information for future reference or to share with an advocate.
- Templates have been provided for letters and reports to assist complaints specialists (CS) and review authorities (RA). These templates can be modified to suit specific circumstances or cultural considerations.

Aboriginal Children, Youth and Families

- DAAs follow the Complaints Policy and will receive and address complaints related to delegated services they provide.
- If MCFD receives a complaint regarding a DAA service, the complainant is advised that the complaint needs to be addressed by the DAA and with the complainant's permission, the MCFD CS forwards the complaint to the DAA CS by email. The complainant is also given the DAA CS contact information.
- MCFD provides services to Aboriginal children, youth and families. Some complaints from or about services to these Aboriginal families, children and youth will be received by MCFD. MCFD will handle these complaints in a culturally sensitive manner. If the MCFD CS or staff are not familiar with cultural practices of an Aboriginal Community, they should consult with the appropriate DAA CS or another person with relevant knowledge, skills and experience.
- DAA staff can be placed in a difficult position when they receive complaints about MCFD services or staff. In these cases, the DAA staff explains that the complaint needs to be made to MCFD and, with the permission of the complainant, the matter is forwarded to the relevant MCFD CS.
- DAA delegated staff cannot take a position opposed to another director. The delegated staff person can accept the complaint information and forward it to the CS.
- It is important for the DAA staff to be clear about what their role is in the complaints process and ensure that they do not have any conflicting roles or responsibilities.
- If the complainant asks the delegated DAA staff to take an advocacy role in a complaint about another director, the delegated DAA staff, DAA CS or MCFD CS assists the complainant to identify another advocate
- The DAA and MCFD will collaborate to ensure that the complainant is supported in making their complaint.

Accessibility

The complaints process is intended to be open and accessible. Staff ensure that people have their concerns addressed easily and fairly.

- A person can make a complaint to any staff person. The staff person is responsible to provide the person with the contact information for the CS and to take the person's contact details and provide this information to the CS for follow up.

Solving complaints and disagreements is a part of a helping relationship.

When the complainant is receiving services from a practitioner, the practitioner continues to work towards solving complaint issues even after a complaint has been made to the complaints specialist.

- Complaints are received in a positive manner so that a person does not experience any negative consequences for making a complaint.
- The staff person does not screen the eligibility of the complaint.
- The staff person emails the contact details to the CS. The staff person should include any additional complaint information provided by the complainant, but the staff person is not expected to question the complainant or try to gather more than just contact information.
- The CS will reply to the staff person to confirm the information has been received.
- A complaint under the Complaint Policy begins when the CS has direct contact with the complainant. The complaint is not registered until the CS receives the complaint directly from the complainant or, with the complainant's consent, the complainant's advocate.
- The CS has responsibility for contacting the complainant using all available contact information. If the complainant does not respond to phone messages, letters or other attempts by the CS at contact, no complaint is registered.

If it is unclear whether the person is making a 'formal' complaint, the staff person can ask: "Is this a problem that we can solve or would you like to make a complaint to our complaints specialist?"

If the person does want to make a complaint, the staff person ensures any details provided are sent to the complaints specialist along with the contact information of the complainant.

Recording and Tracking

- Complaints are entered on ICM by the CS.
- CS works with the complainant to clearly outline, in writing, the complaint issues and the requested remedy. This information is recorded in ICM.
- Throughout the complaint process, the CS ensures relevant information is recorded in ICM.
- The CS monitors the timelines of the complaint and supports staff to complete Resolutions tasks within timelines and RAs to complete administrative reviews within timelines.
- The ICM User Guide for Complaint Resolution and Review Process (May 2012) provides information and concrete examples of recording in ICM.

Some complaints are lengthy and complicated. Sometimes this is because the complainant is frustrated and dissatisfied. They may not articulate their concerns in a clear concise manner.

The complaints specialist can help sort and categorize a long list of incidents or concerns into themes. The remedy or solution focuses on addressing these themes. Often, this means that specific strategies are identified to address the larger thematic interests in order for matters to be resolved at the service level to the satisfaction of the complainant and MCFD or DAA.

For example--the complainant may report “the worker never believes me, speaks to me rudely, and doesn’t return my calls”. The complaints specialist identifies that the themes are information sharing and respectful treatment.

The remedy could be that information is shared and the complainant is treated respectfully. This respect is demonstrated by the practitioner as follows:

- returning calls within an agreed timeframe;
- reflecting the complainant’s statements back to ensure they are heard and understood; and
- explaining how the complainant’s information is used to inform planning.

Acceptance of the Complaint

Criteria for accepting or not accepting a complaint:

- Complaints are accepted when they are about a decision, act or failure to act related to an MCFD service or delegated services provided pursuant to the *CFCSA* by a Delegated Aboriginal Agency (DAA).
- Complaints are accepted from:
 - anyone who receives MCFD services or DAA delegated services or who believes they should receive MCFD services or DAA delegated services;
 - a person representing anyone who receives MCFD services or DAA delegated services or who believes they should receive MCFD services or DAA delegated services; and
 - The Representative for Children and Youth (RCY).

Complaints Policy (October 2012)

- The complaints process is open and accessible.
- Some complaints are very complex with multiple complaint issues and many factors which can impact the decision whether or not a complaint is accepted. It is helpful to outline the complaint issues and proposed remedies. Confirm these with the person making the complaint.
- The CS helps the complainant to understand what types of issues can be accepted and when possible, works with the complainant to frame their issues in a manner which can be addressed within the complaints process.
- It is possible that some of the issues are accepted as complaint issues and some are not accepted.
- The CS communicates clearly to the complainant which issues are accepted, which issues are not accepted and the reasons for the decision.
- To avoid unrealistic expectations of the complaints process and to avoid complainant dissatisfaction:
 - the CS clearly communicates which issues cannot be addressed in the complaints process; and
 - advises the complaint if their proposed remedies are unrealistic.
- The complainant does not need to address the complaint with involved staff before a complaint is accepted.
- The merit of the complaint or nature of the requested remedy should not be judged or considered when deciding whether the complaint is eligible for the complaint process, however, the complainant will be advised if their remedy is unrealistic, or not possible within the complaints process. For example, if the complainant's

remedy is to have a staff person fired, the complainant is advised that personnel issues will be referred to the proper process, but that the complaints process in itself will not result in staff dismissal.

- Complaints about past issues or events will be accepted to the complaints process.
- A child or youth can make a complaint. Staff and the CS should support the young person to access the support of an advocate, but it is the child or youth's decision whether they will work with an advocate.
- Complaints are accepted directly from advocates. When this occurs, the CS will confirm with the complainant that the advocate is acting on their behalf and will secure informed written consent to share legally eligible information. (For more details, see page 18 of this guideline).
- To be eligible, the issue must be related to a provided MCFD service or DAA delegated service.
 - Decisions related to contract management are not eligible.
 - Foster parents may act as advocates on behalf of children, youth or family, with the appropriate consents, when the complaint is about a service provided directly to the child, youth or family.
 - Complaints about services provided by a MCFD contractor or service provider are not eligible. Each contractor and service provider is required to have a complaints policy. The CS assists the complainant in accessing the contractor's or service provider's complaints process.
 - Complaints related to other MCFD contracted services provided by a DAA (i.e. a MCFD contracted home support program) are eligible for the complaints process with the DAA since the DAA is the contractor and uses this complaint process.
- Complaints about requests for services not provided by MCFD/DAA are not eligible. However, if the service is available in another LSA, the complaint should be accepted. Complaints about MCFD/DAA policy are not eligible as these complaints do not related to provided services.
- The complainant must be eligible or believe they are eligible for the service. Advocates can make complaints on behalf of the complainant, with the complainant's consent, but a third party cannot be a complainant in their own right except for the Representative for Children and Youth (RCY). If the ineligible person is complaining about staff conduct, disagreement with planning or other issues, they should be directed to discuss their concerns with the appropriate manager.

An example: a teacher can advocate for a person receiving services or eligible to receive services, with their consent, but the teacher cannot make an independent complaint under the complaint process. The teacher can discuss concerns about any issue (case planning, staff behaviour, etc.) with the appropriate manager.

- There are other avenues for discussing disagreements with colleagues and others. These are not considered complaints under this policy.
- The RCY can make a complaint in her own right.

A complaint may not be accepted if:

- The child/ youth, young adult or complainant does not want to proceed with the complaint; or
- The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or
- The matter is eligible for a review panel hearing under the *Mental Health Act*; or
- The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson's Act*; or
- The complaint concerns matters related to youth justice services and the person making the complaint is not authorized to access information under the *Youth Criminal Justice Act*; or
- The matter is eligible for a foster parent review or appeal.

Complaints Policy (October 2012)

As outlined in the policy excerpt above, in certain circumstances, it may be decided not to accept a complaint.

Clearly articulating the complaint issues assist with determining whether or not any of these circumstances apply. Complaints can involve multiple issues and it may be decided that some issues can be accepted while others cannot. For example, the lack of respectful treatment is a common complaint issue. This issue can often be addressed despite other matters being before the courts.

This section will provide some discussion and guidance for each of the circumstances where it is not appropriate to accept a complaint.

- **The child/youth, young adult or complainant does not want to proceed with the complaint.**
 - There may be situations when the complainant changes their mind and does not want to proceed with a complaint.
 - In some cases, a complaint issue will concern a child/youth or young adult who is not the complainant. In these complaints, the child/youth or young adult is the subject of the complaint. For example, if there is a complaint about access arrangements the child/youth is the subject of the complaint because a change to access arrangements directly impacts the child/youth.
 - In cases where the child is the subject of the complaint, the CS should consider whether all of the complaint issues involve the child/youth or whether some do not impact the child/youth. For example, a complaint could include issues about access to a child/youth and disrespectful treatment and poor communication with the parent. The issues of respectful treatment and poor communication with the parent do not involve the child/youth.
 - When a child/youth is the subject of the complaint, the views of the child/youth must be heard and considered. This includes their views about whether the complaint should proceed. The CS supports the child/youth to express their views, reassuring the child/youth that there are no negative consequences regardless of the views expressed.
 - If the child or youth does not have capacity to express their views, the child's guardian speaks to the child's views (*Infants Act*).
 - The CS considers the views, best interests and rights of the child/youth and the right of the complainant when deciding whether or not to accept the complaint when the child/youth does not want to proceed.
 - The CS may decide to proceed with the complaint despite the wishes of the child/youth. In these cases, the CS should:
 - Explain the reasons for this decision to the child/youth in a clear understandable fashion.
 - Ensure that the child/youth is able to contact an advocate.
 - Ensure that the child/youth has support through the complaints process.
- **The matter is before the courts or the remedy sought would conflict with an order or decision of the court.**
 - The CS should consider whether all of the complaint issues are related to matters before the court or would create a conflict with an order or decision of the court. The issues that are not involved in the court process can be heard in the complaints process. For example, a complaint that a parent was not involved in case planning is not impacted by court proceedings and should be accepted as a complaint issue.

- **The matter is eligible for a review panel hearing under the *Mental Health Act*.**
 - Mental health clinical decisions which are eligible for a review panel hearing under the *Mental Health Act* are not eligible for the complaints process. However, there may still be issues that can be addressed in the complaint process. For example, if the complainant feels they were not treated respectfully by staff, this can be addressed in the complaints process.
- **The matter is eligible for a review under another enactment or regulation other than the *Ombudsperson's Act*.**
 - It is important for the CS to know which enactments governed the actions or decisions being raised in the complaint– because CS or review authority may not have the legal jurisdiction to review certain complaint issue. In such cases, the complaint cannot be accepted and the person raising the issue is told how to access the appropriate process. In some cases, it will be clear which enactments apply, but in other cases, the circumstances may be unique or uncommon.

Some examples of enactments that have their own review include:

 - *The Child Care Subsidy Act* provides appeals to child care subsidy decisions.
 - *The Financial Act (FAA)* addresses debts to the province. It is not possible to negotiate or forgive a debt to the province, except through the *FAA*.
 - The *Ombudsperson Act* is an exception is because that *Act* provides the Ombudsperson with a broad jurisdiction to review government actions and decisions. Complainants have the right to have decisions and actions reviewed under the Complaints Policy and by the Ombudsperson.

The Financial Administration Act (FAA) governs debt owed to the province. If the complaint concerns agreements to pay money to the province (for example maintenance agreements) or the remedy requires that agreed payments be reduced or forgiven, the complaint policy does not apply. The person must make application under the *FAA* to have the debt forgiven or payment changed.

- **The complaint concerns matters related to youth justice services and the person making the complaint is not authorized to access information under *The Youth Criminal Justice Act (YCJA)*.**
 - Even with the consent of the young person, the YCJA restricts the information can be shared and with whom.
 - Complaints directly from youth can be accepted into the complaints process.
 - The RCY has the authority to advocate for a youth.
 - A complaint cannot be accepted from persons not authorized to access information under the YCJA even if such complaints are about services provided to a specific young person.
 - For matters under the YCJA, the CS, or staff in general, should consult with the Regional Youth Justice Consultant or the Regional Director of Youth Justice.

A complaint related to a YCJA matter is accepted if:

- the young person involved makes the complaint.
- the complaint is about a probation officer and the services provided.

Complaints about Youth Custody Centres are referred to the Custody Centre complaints Specialist. In all cases the Regional Director of Youth Justice is advised of the complaint.

A broader complaint about youth justice services or custody services would be referred to the Provincial Director of Youth Justice.

Advising the Complainant of the Decision to Accept or Not Accept the Complaint

- The decision whether to accept the complaint is documented and the complainant is told as soon as possible. Generally, the CS will speak to the complainant by phone or in person to tell them the decision and explain the reasons for the decision.
- This will be followed up with a letter advising the complainant of the decision and detailing the reasons for the decision. This letter is sent within seven days of the CS receiving the complaint.

Letter templates have been developed and are available. The CS can modify and/or combine the template letters as needed.

Decision not to proceed with a complaint

- Circumstances can change during a complaints process. It may be decided not to proceed with a complaint if:
 - The child/ youth, young adult or complainant does not want to proceed with the complaint; or,
 - The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
 - The matter is eligible for a review panel hearing under the Mental Health Act; or
 - The matter is eligible for a review under another enactment or regulation other than the Ombudsperson's Act; or
 - The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the Youth Criminal Justice Act; or
 - The matter is eligible for a foster parent review or appeal.
- The decision not to proceed with resolution is made by the complaints specialist.
- The decision not to proceed with an administrative review is made by the review authority.
- The decision not to proceed with a complaint is documented and the complainant is notified in writing within 7 days of the decision not to proceed and the reasons for the decision.

Complaints Policy (October 2012)

- At any point, if circumstances change after a complaint has been accepted, the complaint may be discontinued. These are the same circumstances discussed in the acceptance decision.
- If the complainant has not requested an administrative review when the circumstances listed arise, the decision not to proceed is made by the CS.
- If the complainant has requested an administrative review when the circumstances listed arise, the decision not to proceed is made by the review authority.
- The decision and reasons are documented and the complainant is advised as soon as possible. Ideally the complainant will be told verbally and then in writing. The complainant is always sent a written response.

Misconduct, Criminal Conduct and Child Safety Concerns

- When the complaint concerns allegations of negligence or misconduct on the part of an employee, an investigation is conducted separate and apart from the complaints process. Such an investigation will be consistent with any relevant legislation, collective agreements and personnel policies.

- When a complaint concerns allegations of criminal conduct, the matter is reported to the appropriate police force or Royal Canadian Mounted Police Detachment (RCMP).
- When the complaint raises child protection concerns, the matter is reported to the appropriate child protection staff.
- There must not be any delay in reporting criminal matters or child protection matters. In these cases, the CS encourages the complainant to report criminal and child protection matters directly to the appropriate agency.
- If the complainant does not wish to make the report, the CS advises the complainant that the CS has a duty to report, and CS makes the report.
- If the complainant agrees to report, the CS advises the complainant that the CS must contact the relevant agency to confirm that the report has been received.
- The CS confirms with RCMP, police or child protection staff that the report has been received.
- The CS should seek appropriate, timely supervision in deciding to report issues to human resources, police, and RCMP or child protection staff.
- Despite reporting matters to police, child protection staff or personnel staff, the complainant may still want to proceed with resolution or administrative review. The complaints process will be conducted in a manner which does not interfere with criminal or child protection investigations or with personnel processes.
- The conduct of the complaints process in these circumstances will differ with each situation. The CS will work with the agency involved and seek clinical supervision for specific support and direction.

Resolution or Administrative Review

Once issues are accepted for the complaint process, the complainant chooses between resolution and administrative review.

- The complainant chooses whether to participate in resolution or to request an administrative review.
- There are no additional selection criteria which restricts access to either process.
- The complaint can proceed directly to administrative review even if the complainant has never tried to address the complaint with staff informally or through resolution.
- The CS is responsible for explaining the two processes to the complainant. Research has shown that complainants are more satisfied with complaints processes that offer flexible approaches, complainant involvement and input to the outcomes. Resolution is the process which best provides these benefits.

Resolution	
Complainant Pros <ul style="list-style-type: none"> • Timely – the process is completed in 30 days unless an extension is agreed. • Flexible- any approach to solving the complaint can be taken. Collaborative decision making approaches such as FGC, mediation and traditional decision making process are encouraged. • Culturally respectful – resolution can take an approach with is culturally appropriate to the complainant and/or family and community. • Control – the complainant has to agree to the complaint solution. If a solution cannot be found, the complainant has the option of requesting an administrative review. • Build relationships – it is possible to strengthen the working relationships through the process of resolution. • Retains Options – the complainant can request an administrative review at any time, during the course of resolution or at the end if a solution is not found, the complainant can request an administrative review. 	Complainant Cons <ul style="list-style-type: none"> • A solution to the complaint may not be agreed to by the complainant and MCFD/DAA. • The complainant may find it difficult to engage in the process with involved staff or managers. The CS should explore this with the complainant and offer help and support to the complainant, and support the complainant to access an advocate.
Administrative Review	
Complainant Pros <ul style="list-style-type: none"> • An uninvolved person will hear and examine their concerns, come to a conclusion and may make recommendations. • The complainant does not have to engage in a process with the involved staff or managers. 	Complainant Cons <ul style="list-style-type: none"> • The AR process is a structured process and does not provide flexibility to the complainant. • The complainant does not control what recommendations are made by the RA. • The RA may make recommendations and it is the involved manager or director who decides whether to follow the recommendations. • Once the AR is complete, the complaint issues will not be considered again in the complaints process.

- The complainant is allowed time to consider which processes to choose. The timeline on each option begins once the complainant has chosen between administrative review and resolution. The CS can use the time between the complaint being made and the complainant deciding between resolution and administrative review to prepare the complaint summary and complete other preparatory work.
- The 30 day time frame for either resolution or administrative review begins when the complainant advises the CS which option is chosen. The CS documents the date and which approach the complainant wishes to use.

- A letter is sent to the complainant confirming her/his choice and details of the process chosen. It is possible that the complainant will decide which process they chose prior to the CS sending the letter accepting their complaint. In this case, it is possible to send one letter accepting the complaint and confirming which process is chosen. The CS can combine the relevant letter templates to develop a letter which achieves both goals.
- Once the complainant chooses between resolution and administrative review, the CS advises the involved staff as appropriate.
- If the complainant chooses administrative review, the CS delegates the RA.

Documentation, Tracking and Reporting.

- Complaints are documented and tracked on the standard system provided for the purpose. For most service areas, this is the Integrated Case Management System (ICM).
- Quarterly and Annual Reports will be produced using data from ICM or the standard systems.

POLICY STATEMENT 2

The importance of advocates in supporting complainants and to express their views is recognized.

Complaints Policy (October 2012)

- MCFD supports a person's right to have an advocate of their choice to support them through the complaints process or other interactions with MCFD. An advocate can be a:
 - Friend or relative (informal advocate);
 - Service provider such as a social worker, probation officer, foster parent, teacher, youth worker; or a
 - Formal advocate such as the Representative for Children and Youth (RCY) or a designated Aboriginal representative.
- An advocate helps a person to express their thoughts and opinions to decision makers. At times, the advocate may speak on behalf of a person and, at other times, the advocate supports a person to express their views directly.
- MCFD/DAA staff or the CS may recognize that a person would benefit from the support of an advocate or the complainant may ask for help to find an advocate.
- Staff should know about the formal advocates in their area including the RCY and the designated representative from local Aboriginal communities.
- Staff and the CS should assist complainants to access advocates. Staff may also help the complainants to consider informal advocates among their family or friends who could help.
- When an advocate makes a complaint on a person's behalf, the CS will confirm with the complainant that the advocate is acting on their behalf before considering whether the complaint will be accepted.
- Foster parents may advocate for a child/youth or their family in the complaints process. In these situations, the complaint is from the child/youth or family member and the CS confirms that they agree to the foster parents acting as their advocate. There is a risk of role confusion when foster parents act as advocates. On one hand foster parents are working with MCFD/DAA's and on the other they are an advocate. The complainant and foster parent should consider whether it would be more suitable to have another advocate.
-
- At times, a teacher, community social worker, or other community professional may take an advocacy role. It is important to ensure that the scope of the person's role is clearly identified.

An advocate's role can be clarified by respectfully asking a few questions.

For example, if a teacher is advocating for a parent around child care, you might ask:

"Ms. Jones, you are suggesting we fund an out of school program for Sara? Is that your opinion as her teacher or are you suggesting this as an advocate for her father?"

If the teacher identifies a social or educational benefit as a teaching professional, that is information to add to the understanding of the situation. If she is proposing the option on behalf of the parent as his advocate, this becomes an option for resolution or a requested remedy.

Sharing Information with an Advocate

Information is shared or not shared according to *the Freedom of Information and Privacy Protection Act (FOIPP)*, *the Youth Justice Act (YJA)*, *the Youth Criminal Justice Act (YCJA)*, *the Child Family and Community Service Act (CFCSA)* and other relevant acts and regulations.

Complaints Policy (October 2012)

- In the course of the complaint process, the advocate will have access to some of the complainant's private information. The complainant must provide informed written consent to share information with an advocate.

Informed consent means that the complainant understands the scope of information that will be shared and considers all possible positive and negative consequences of agreeing to share information. The complainant will want to consider the relationship they have with the advocate. Is this a formal advocate or a family friend? Is the complainant comfortable with the advocate knowing sensitive details of their life? The discussion of informed consent is not intended to discourage the complainant from working with an advocate but to ensure that the complainant's privacy is protected.

- Information will be shared with the advocate respectfully as required to address the complaint issues. Information not directly related to the complaint issues should not be shared.
- As noted in the section on complaint acceptance, the *Youth Criminal Justice Act* (YCJA) restricts what information can be shared. The youth cannot consent to sharing of information outside the scope allowed by this act. Consult with a person with expertise in this area before sharing information which might be impacted by the YCJA.

The Representative of Children and Youth

The Representative for Children and Youth (RCY) provides advocacy services to ensure that the voice and views of young people are heard and that their rights and interests are upheld in decisions that are being made about them. Children, youth and their families can be referred to the RCY to access advocacy services.

- MCF and DAA staff including CS will follow the MCFD/RCY Advocacy Protocol.
<http://www.rcybc.ca/Images/PDFs/News%20Releases/RCYadvocacyProtocol%20Final%20April%201.pdf>

POLICY STATEMENT 3

resolution is an opportunity to solve complaints issues close to the local level.

Complaints Policy (October 2012)

Resolution is a collaborative problem solving approach which includes a range of processes that come to a solution on which both the complainant and MCFD/DAA agree. A step by step approach to resolution is not provided in policy because flexible and responsive approaches will better meet the needs of the complainant, children, youth and community.

- Approaches to resolution include:
 - discussion between the complainant and the involved staff or manager,
 - family group conferences,
 - traditional decision making approaches, and
 - mediation.
- It is important that the complainants have realistic expectations of the possible solutions to the complaint. It is not productive if the complainant is seeking a remedy which is not possible because of legislation, policy or funding issues.
- It is important that the right people are involved in the resolution process. The person who can agree to the complaint solution should be present during the resolution process, or at least, is immediately available to make a decision on the proposed solution.

A large number of complaints involve communication issues. Complainants express feelings of being left out of planning, not understanding decisions and the reasons for the decision. At the beginning of any resolution processes, ensure that the complainant understands the planning, decisions and reasons for decisions. If there are legislated or policy reasons for planning, decisions or actions, let the complainant know what these are and how any changes are constrained by legislation and policy.

- Often the involved staff/manager will manage the resolution. When this is the case, the CS will be responsible for monitoring the timelines of the process, recording outcomes and resolution agreements and sending the appropriate correspondence to the complainant.

- In complex complaints or at the request of the involved staff/manager or complainant, the CS can provide additional support. This can take the form of facilitating meetings, helping to support culturally appropriate approaches for Aboriginal families and supporting complainants to access advocates.

The complainant may take an adversarial stance, but resolution is not an adversarial process. Involved staff/managers should take an open, active approach to addressing complaint issues. Complaint issues should be identified and examined and where possible resolved.

- The DAA will develop approaches to resolution that are culturally appropriate to their communities.

Decision Not to Proceed with Resolution

- Circumstances can change during the complaints process. It may be decided not to proceed with resolution if:
 - The child/ youth, young adult or complainant does not want to proceed with resolution; or,
 - The matter is before the courts or the remedy sought would conflict with an order or decision of the court; or,
 - The matter is eligible for a review panel hearing under the Mental Health Act; or
 - The matter is eligible for a review under another enactment or regulation other than the Ombudsperson's Act; or
 - The complaint concerns matters to related youth justice services, and the person making the complaint is not authorized to access information under the Youth Criminal Justice Act; or
 - The matter is eligible for a foster parent review or appeal.

Complaints Policy (October 2012)

- Circumstances can change during the course of a complaint. The CS may decide not to proceed with a complaint if certain circumstances arise. These are discussed in the section entitled Policy Statement 1.

Resolution Timelines

- The 30 day timeline for resolution begins when the complainant advises the CS that they chose to engage in resolution. The time line is 30 actual days including weekends and holidays.

- An extension of a specified period of time can be agreed upon by the complainant and MCFD or the DAA. There can be more than one extension.
- Resolution ends when:
 - the complaint is resolved to the satisfaction of the complainant and MCFD or the DAA, or
 - the 30 day period for resolution ends without an agreement or an extension, or
 - the complainant requests an administrative review.
- Resolution is complete when a letter is sent to the complainant outlining the outcome including any agreements and actions to be taken and the complainant's right to request an administrative review of the matter.
- Templates for the letter have been developed and are available. The CS can modify and/or combine the template letters as needed.

POLICY STATEMENT 4

An administrative review provides an examination of the complaint issues by a review authority, who has not been involved in matters related to the complaint.

Complaints Policy (October 2012)

Conducting an Administrative Review

Please see [The Complaints Policy: Administrative Review Practice Guidelines](#) (October 2012)

COMPLAINANT'S CHALLENGING BEHAVIOUR

A complainant's conduct or behaviour may be difficult or inappropriate. It is important to distinguish between the difficult behaviour, the person and their complaint issues. All complainants are treated respectfully, all complaint issues are addressed according to policy and any challenging conduct is identified and addressed.

People bring complaints because they have a genuine belief that a decision or action is unfair or wrong. Complainants can be extremely anxious, frustrated and angry about their circumstances or issues. However, challenging behaviour which is beyond the usual level of anger, frustration and anxiety.

When complainants have challenging behaviours, their complaints will tend to take more time and resources compared to other complaints of a similar nature. The pattern of behaviour can also have negative impacts on the complainant. Challenging complainant behaviour has been observed in complaint processes across sectors and jurisdictions. The Commonwealth Ombudsperson, New South Wales, Australia developed an excellent practice guide to address challenging complainant behaviour. This section draws from this guide¹.

There are some indicators that signal when a complainant may exhibit challenging behaviours. These include:

- repeated communication (phone calls or emails) without allowing adequate time for the CS to respond or make progress on the complaint,
- emails or letters with bold letters and underlining,
- expression of unrealistic expectations of the complaints process or outcomes, and
- providing a large amount of documentation without organizing or synthesizing the material to reflect specific complaint issues.

While these are not definitive indicators, they provide a signal for the CS to ensure that steps are in place to prevent or address challenging behaviour. While these strategies are good practice for any complaint, they are especially important when the complainant exhibits challenging behaviour.

Some examples of steps that can be in place to avoid challenging complainant behaviour or to address such behaviour are:

- Accept that working with challenging complainant behaviour is part of the complaint process.

¹ Better Practice Guide to Managing Unreasonable Complainant Conduct (May 2012) provides a good framework for classifying and addressing difficult conduct as well as some excellent specific strategies for challenging behaviour including scripted responses to common types of challenging behaviour

- Expect respectful, cooperative behaviour from the complainant.
- Follow a consistent complaints process in all cases.
- Establish realistic expectations for the complaint process with every complainant from the beginning of the process. For example, complainants should be clearly told when complaint issues cannot be addressed by the complaints process and when the complainant's requested remedies are not possible.
- Define the complaint issues and focus on those which can be addressed in the complaint process.
- Communicate clearly. If information is provided verbally, follow up in writing. Keep information focused and brief.
- Offer flexibility while ensuring the integrity and consistency of the complaints process. For example, the complainant may request an administrative review but does not select the review authority.
- Consider different processes or locations that may be better suited to the situation and the complainant's cultural background.
- When specific behaviours are disruptive, clearly communicate to the complainant what the behaviours are, how the behaviour negatively impacts the complaints process and what would be more productive in the complaints process.
- Communicate clearly, respectfully and consistently with the complainant. It can be helpful to acknowledge the complainant's feelings or thoughts about the situation without giving the impression that you agree with the complainant's position or challenging behaviour. This acknowledgement can help the complainant feel reassured that their concerns are heard and considered even if they cannot be addressed in the complaint process.

"I understand that you do not agree with the conclusion and recommendations of the review authority. I hear how frustrated you are. You do have the right to speak to the Ombudsperson. Would you like that phone number"?

- State the situation in the positive. What are the complainant's rights or options?

Rather than "We cannot hear your complaint further" try "The administrative review has been completed. I know that you do not accept the conclusion. I will send the written report and you can contact the Ombudspersons if you are not satisfied".

or

“I understand that you would like a different person to look at your complaint. This is not possible. You can discuss your concerns with the Ombudsperson”.

- Once the information has been clearly provided, it is not the responsibility of the CS or the RA to convince the complainant to accept an outcome or to repeatedly restate or explain the outcome.

Sometimes people will say that they do not understand when they do not accept the decision or outcome. In these cases, the complainant may have options for further review such as the Ombudsperson.

- Support advocacy. Advocates can help the complainant to understand the process, outcomes and further options. Advocates can also help the complainant to clearly communicate what the complaint issues are and to help the complainant engage constructively in the process.
- Prepare the advocate prior to meetings.
- Use of a mediator.
- Demonstrate professionalism. People who are angry and frustrated can act in ways that will cause you to experience those same feelings. Discuss these feelings with your supervisor. By responding to the complainant in a calm manner, you are modelling the type of behaviour which will help the complainant to be successful in their self advocacy.
- Establish appropriate expectations and boundaries with the complainant. Do not accept abusive or aggressive treatment. If a complainant's behaviour is aggressive, threatening or abusive, advise the complainant how the behaviour is unacceptable and ask them to change their behaviour. If they are not able to shift, you can ask them to contact you when they are calmer.

“I understand that you are angry. When you yell and swear at me, I feel threatened. Can we speak when you are calm? If the person continues, you can say, “I am going to end this conversation now because you are yelling and swearing at me. You may call back tomorrow.”

Discuss any abusive behaviour or threats with your supervisor.

GLOSSARY

An **advocate** supports a person to express their thoughts and opinions to decision makers. At times, the advocate may speak on behalf of a person and at other times, the advocate helps and supports a person to express their views directly. Advocacy protects a person's rights by supporting them to make their concerns known and to be included in decision making. MCFD supports a person's right to have an advocate of their choice to support them through the complaints process or other interactions with MCFD. An advocate can be a:

- Friend or relative;
- Service provider such as a social worker, probation officer, foster parent, teacher, youth worker; and
- A more formalized or independent child and youth advocate such as the Representative for Children and Youth (RCY).

Child is defined in the *Child, Family and Community Service Act*, as a person under the age of 19. In this document, the term youth is used to refer to an older adolescent.

Complainant is any person who submits a complaint. A complaint or concern may be expressed by anyone who is receiving services or believes themselves eligible to receive services or by others on their behalf with the person's consent.

The **complaints specialist** (CS) is the staff person who is designated to support the Complaints Policy. The complaints specialist is not in a position to override decisions made by workers, supervisors or management. The role of this person is to:

- Provide support to the complainant and ensure that their perspective about their complaint is heard and that there is a fair process for resolving the complaint;
- Provide support to practitioners and supervisors to review their decision making and to resolve the complaint with the complainant;
- Provide a facilitative and/or mediating role in finding a resolution to the identified complaint;
- Support the review authority and the complainant through the administrative review process.

A **delegated service** is a service provided by MCFD pursuant to *Child, Family and Community Service Act* (CFCSA); or a delegated Aboriginal agency (DAA) pursuant to *Child, Family and Community Service Act* (CFCSA) under a delegation enabling agreement or a delegation confirmation agreement.

A **designated representative**, when used in relation to the Nisga'a Lisims Government, a treaty first nation, an Indian band or Aboriginal community, means a representative designated in accordance with the section 12 of the *CFCS* Regulations.

The **review authority (RA)** is the person who conducts an administrative review. The review authority is an uninvolved person who reviews a complaint, draws a conclusion and may make recommendations to a director.

Resolved is the term used to describe a complaint outcome whereby the complaint process resulted in a solution that is satisfactory to the complainant and MCFD or DAA.