

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

PURPOSE: For DECISION by the Honourable Suzanne Anton, Attorney General and Minister of Justice

ISSUE: Response to Representative for Children and Youth report released May 14, 2015.

SUMMARY:

- The Representative released her latest critical injury report on May 14, 2015. This note provides the relevant details of the report and seeks direction on the response.

BACKGROUND:

The report and recommendations

- The Representative released her latest critical injury report on May 14, 2015.
- The report, titled *Paige's Story: Abuse, Indifference and A Young Life Discarded*, examines the life and death of a young Aboriginal girl who spent most of her life connected with the Ministry of Children and Family Development (MCFD) before dying of an overdose shortly after her 19th birthday in Vancouver's Downtown Eastside.
- The report is very critical of government's lack of response to this young girl's circumstances. The report states:
In essence, Paige's story is one of how professional indifference to her life circumstances continually left her – and at times even actively placed her – in harm's way. This indifference contributed directly to her untimely death.
- Specifically, the report directs recommendations to the MCFD, the Attorney General, the Ministry of Health, the Ministry of Education, the First Nations Health Authority, and the City of Vancouver.
- The recommendation (Recommendation 3) directed to the Attorney General is that:
The Attorney General of British Columbia provide the public with a clear explanation as to why agencies and service providers are persistently permitted to fail to report harm and abuse, as was the case in Paige's experience, contrary to the [*Child, Family, and Community Service Act* (CFCSA)]. [see Appendix A for the relevant provisions in the CFSa]
- The report then details precisely what response the Representative requires which includes: [see Appendix B for the full recommendation and details]
 - annual reporting of the number of investigations and prosecutions for this offence;

- report of the number of cases brought forward by the Director of Child Welfare for attention and investigation;
 - individual professional bodies governing those who work with children and youth to begin applying professional sanctions to members who have failed to report instance of abuse or neglect; and
 - the Attorney General and the Director of Child Welfare embark on a substantial and meaningful public awareness campaign on the duty to report suspected child abuse.
- This report references a 2014 report, titled *Lost in the Shadows*, which contained a recommendation that the Attorney General “review the reasons for a lack of enforcement of the *CFCS Act* in the province and take steps to promote compliance, if necessary”.
- In the latest report, the Representative states that the 2014 recommendation was not implemented:

In her report *Lost in the Shadows*, the Representative called for the Attorney General to review the reasons for a lack of enforcement of the *CFCS Act* in B.C., and take steps to promote compliance, if necessary. The Representative fails to understand what action was taken at the level of the Attorney General as there has been no direct follow up on this issue since that report was issued on February 6, 2014.
- In response to the 2014 recommendation, on March 6, 2014, the Attorney General wrote to both the College of Physicians and Surgeons of B.C. and the College of Registered Nurses of B.C. to seek advice on the reasons for lack of enforcement of the *CFCS Act*. The colleges replied that they were working with the RCY, MCFD and our ministry to identify and address systemic issues that may contribute to health professionals failing to report a child in need of protection. The Representative was copied on both letters.
- In addition, a meeting was held at the RCY's offices which engaged MCFD, representatives from the College of Physicians and Surgeons, College of Registered Nurses, and several other Colleges and health care organizations. At that meeting there was broad recognition that there was a common goal to encourage practitioners to report.
- When the ministry spoke with MCFD regarding Paige's report, staff were informed that the third quarterly report of MCFD had provided details of the work that had been done by a working group as well as work done by the colleges and that MCFD had considered the recommendation implemented. The Representative wrote to MCFD and agreed that the recommendation was implemented. This report and correspondence was internal to MCFD and was specifically directed at MCFD's role with respect to the recommendation; however, the same steps that MCFD articulated were the steps that the Ministry of Justice took and considered that recommendation implemented.
- When the ministry received the advanced draft of the recommendations in the latest report, the Deputy Attorney General wrote to Bill Naughton of the Representative's office advising that considerable work has been done on this issue and the latest recommendation does not reflect that reality. The letter requested that the report not

go out until the Ministry of Justice and MCFD had the opportunity to discuss the matter with the office of the RCY. The ministry did not receive a reply.

- In addition to recommendation 3, the report mentions the Ministry of Justice in recommendation 6 which is directed at the Ministry of Aboriginal Affairs and Reconciliation:
 - That the Ministry of Aboriginal Affairs and Reconciliation, with support from MCFD and Justice, prepare a detailed annual report for the Minister's Advisory Council on Aboriginal Women on every unexpected death of an Aboriginal girl or woman in care, or formerly in care, in B.C. and that a review of urban Aboriginal program funding is conducted.
- The Representative has raised the question in the media of why no investigations have been undertaken regarding possible failures to report under the CFCSA. The ministry response has been that police must receive a formal complaint in order to initiate an investigation.
- On May 27, 2015, the Union of British Columbia Indian Chiefs (UBCIC) wrote to the Office of the Chief Constable of the Vancouver Police Department to ask for "an investigation into this matter and to examine every instance where a report was not made, including instances where your officers released Paige into the care of another person and not her proper guardian without notifying MCFD". On May 29, 2015, Chief Constable Adam Palmer replied to UBCIC confirming that E-Division RCMP is the appropriate agency to conduct an investigation given that the allegation involves Vancouver Police Department as well as other multi-jurisdictional and multi-agency aspects. The Chief Constable states that he has consulted with Acting Deputy Commissioner, Dan Malo, of E-Division RCMP and he concurs.

The response

- In response to the report, the ministry is in contact with MCFD, Policing and Security Branch, Court Services Branch (CSB), and Criminal Justice Branch, while working with GCPE to draft an Information Note.
- For information and background on the issues, the following work has been done in response to the report.
 - As discussed above, the recommendation out of the *Lost in the Shadows* report is considered implemented.
 - With respect to the details of Recommendation 3 that pertain to requests for annual reporting out of statistics, the Criminal Justice Branch advises that:
 - MoJ does have the ability to report on the number of prosecutions for the offence under s. 14 of the CFCSA for failing to make a report when a person believes that a child is in need of protection.
 - JUSTIN data indicates that since 2001, only two such files have been submitted: one in 2001 and one in 2004. In one case the matter was stayed and the other appears to have been concluded by the court without a conviction.
 - Since 2001, there have been no other RCCs with this offence submitted to CJB for charge assessment.

- The need for reporting this data annually is unclear; in most years, there have been no RCCs submitted to, or approved by, CJB; it is unclear how to interpret this and there is risk that it may be erroneously interpreted as failure to enforce s. 14 of the CFCSA.
- CSB has confirmed they have the technical ability to report, however if CSB was to prepare reports at a court record level to be provided to other agencies then approval by the judiciary would be required as per judicial access policy. Summary statistics, however, may not require judiciary approval prior to release.
- With respect to reporting on the activities of the Director of Child Welfare, the Criminal Justice Branch does not have the ability, nor the statutory mandate, to review "cases brought forward...for attention and investigation". Crown Counsel do not investigate offences. It is the responsibility of investigative agencies, which function independently from the Prosecution Service, to investigate and to exercise their own discretion in deciding whether to forward a RCC for charge assessment and prosecution.
- This recommendation has been brought to the attention of MCFD and will be examined with the rest of the recommendations. The MCFD representative with whom we spoke is not aware of any cases being referred and is not sure whether or not such tracking is possible.
- The Attorney General does not have any authority or oversight with respect to independent professional governing bodies or their use of sanctions. As was done after the *Lost in the Shadows* report, the Attorney General could write to the College of Physicians and Surgeons and the College of Registered Nurses, as well the College of Social Workers, the Teacher Regulation Branch, and the British Columbia Association of Chiefs of Police to bring the report to their attention.
- The Policing and Security Branch has indicated that police receive instruction on ss. 13 and 14 of the CFCSA in recruit training. If there is a need they are prepared to develop and circulate an information bulletin on the duty to report.
- As the ministry responsible for criminal investigation and prosecution, the Ministry of Justice may not be the most appropriate champion for a public awareness campaign. This recommendation will be considered by MCFD with the rest.
- Attached is a draft letter responding directly to the Representative. The purpose of this note is to seek direction on what approach to take in that response.

OPTIONS:

Option 1 (recommended option)

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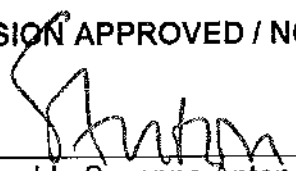
Option 2

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OTHER MINISTRIES CONSULTED:

- MCFD

DECISION APPROVED / NOT APPROVED




Honourable Suzanne Anton, QC
Attorney General and Minister of Justice

Prepared by:
Jodi Roach
Senior Policy Analyst
Justice Services Branch
250 356-8870

Approved by:
Nancy Carter
Executive Director
Justice Services Branch
250 356-6182

Approved by:


Richard J.M. Fyfe, Q.C.
Deputy Attorney General

Attachments:

- Appendix A – Sections 13 and 14 of the CFCSA
- Appendix B – Recommendation 3 from *Paige's Story*
- Appendix C – Draft letter responding to recommendations

Appendix A – Sections 13 and 14 of the CFCSA

When protection is needed

13 (1) A child needs protection in the following circumstances:

- (a) if the child has been, or is likely to be, physically harmed by the child's parent;
- (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
- (e) if the child is emotionally harmed by
 - (i) the parent's conduct, or
 - (ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;
- (f) if the child is deprived of necessary health care;
- (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- (j) if the child's parent is dead and adequate provision has not been made for the child's care;
- (k) if the child has been abandoned and adequate provision has not been made for the child's care;
- (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

- (a) encouraged or helped to engage in prostitution, or
- (b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

- (a) anxiety,
- (b) depression,
- (c) withdrawal, or
- (d) self-destructive or aggressive behaviour.

Duty to report need for protection

14 (1) A person who has reason to believe that a child needs protection under s. 13 must promptly report the matter to a director or a person designated by a director.

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as a result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.

(5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.

(6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(7) The limitation period governing the commencement of a proceeding under the Offence Act does not apply to a proceeding relating to an offence under this section.

Appendix B – Recommendation 3 from *Paige's Story* (page 65)

Recommendation 3

That the Attorney General of British Columbia provide the public with a clear explanation as to why agencies and service providers are persistently permitted to fail to report harm and abuse, as was the case in Paige's experience, contrary to the *CFCS Act*.

Details:

- The Attorney General to report annually on the number of investigations and prosecutions for this offence, as well as other actions taken to ensure compliance with the legislation.
- The Attorney General to detail the number of cases brought forward by the Director of Child Welfare for attention and investigation.
- Individual professional bodies governing those who work with children and youth – including but not limited to social workers, health care workers, educators and police – to begin applying professional sanctions to members who have failed to report instances of neglect or abuse.
- The Attorney General and Director of Child Welfare to embark on a substantial and meaningful public awareness campaign emphasizing that no person should fail to report suspected child abuse. The campaign should educate the public on what specifically constitutes child abuse and promote an active approach rather than one which allows bystanders and professionals to continue to accept the status quo.

First annual report to be presented to the Representative by September 30, 2015.

Draft public awareness campaign to be presented to the Representative by October 31, 2015.

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