

**Presentation to the
Commission on First Nations
and Métis Peoples and
Justice Reform**

**By the
Saskatchewan
Children's
Advocate
Office**



October 29, 2002

Introduction

Good afternoon. It is indeed an honor and a pleasure to have this opportunity to make this presentation to the Commission on First Nations and Métis Peoples and Justice Reform. John Brand, Director of Advocacy Services and I will provide you with a brief overview of the key messages prepared by my Office for your consideration and then we hope to have a candid discussion with you about these matters. We have also prepared information packages for each of you and we will refer to the packages throughout our presentation.

As you know, the Children's Advocate Office was established in 1994 following several events that impacted significantly on the lives of children in Saskatchewan. The Office was the first in Canada to be established as an independent office of the Legislative Assembly and the legislative authority of this Saskatchewan Office is one of the most broadly defined in Canada. One of our priority commitments has been to listen to children and youth and to ensure that their right to be heard in judicial and administrative proceedings, as outlined in Article 12 of the United Nations *Convention on the Rights of the Child* is fully respected in government practice, policy and legislation. In keeping with this priority, we have decided to focus our remarks to you today on what the youth we hear from tell us about the justice system.

We have undertaken a number of activities in our Office as we advocate with and for youth in conflict with the law and we will outline these for you this afternoon. I know that you have heard from a number of individuals and groups already and that you have gathered a wealth of knowledge from the work of your Commission. It is our intent this afternoon to offer our observations in relation to our advocacy work. We have not attempted to provide a comprehensive overview of justice matters in Saskatchewan; rather we want to specifically discuss those aspects of the justice system that we see directly impacting on Saskatchewan youth.

Authority of the Children's Advocate

The vision of the Children's Advocate Office is to ensure the rights of children and youth are respected and valued in our communities and in government practice, policy and legislation.

The Children's Advocate has the authority to promote the interests of, and act as a voice for, children and youth who have concerns about provincial government services. The Children's Advocate engages in public education, works to resolve disputes, and conducts independent investigations. The Children's Advocate also recommends improvements of programs for children to the government and/or the Legislative Assembly.

The CAO advocates on behalf of children and youth as they are outlined in *The Ombudsman and Children's Advocate Act*. The Children's Advocate is an appointed officer of the Legislature. This means that she reports to the Legislative Assembly as a whole and not to a particular minister in Cabinet. The Board of Internal Economy, an all-party standing committee of the Assembly, reviews the annual budget of the Office. The Children's Advocate is independent of government and provides impartial investigations and recommendations.

I. What are your concerns with the justice system?

The question that the Commission has posed is “what are your concerns of the justice system?” To respond to that question we will be primarily presenting to you what we have been told by the youth that have contacted our office.

Young people, including those youth serving custodial dispositions, have raised a number of concerns with the Children's Advocate Office. Within our legislative authority, we respond to these complaints individually and systemically.

1. Individual Advocacy

Since the CAO first began receiving calls, concerns regarding youth criminal justice issues have been raised with the Office. For the current year 2002, as of October 14, my office received a total of 816 calls. Of those calls 117 or 14% were from youth residing in a custody facility or from someone calling on their behalf. This figure is consistent with previous years. In 2001 our office received 175 calls on issues concerning youth justice, representing 15% of all calls to the office. The concerns raised included:

- inappropriate consequencing;
- lack of involvement in case planning;
- no place to go once released;
- segregation;
- lack of programming; and
- no access to cultural programming or denial of access to cultural programming.

As you can see, the calls are wide and varied but they all are representative of what youth raise with our office.

2. *Issues Affecting Youth in Conflict with the Law: A review of issues raised with the Saskatchewan Children's Advocate Office May 1997 to July 1998*

In 1999 the Children's Advocate Office contracted with a researcher to review the issues raised with the Office between 1997 and 1998 by youth in conflict with the law. The review examined complaints received from youth in both secure and open custody. A total of 133 youths in custodial care contacted the Office and raised 247 complaints or concerns during the time-period of the report. A copy of the report is included in your information package.

The intent of this report was to be a constructive identification of the issues that are impacting on youth in custody. The issues were examined within the context of the Youth Model philosophy and the programs delivered to youth by the youth custodial facilities. The primary sources of information for the report were the Children's Advocate Office complaint files from youth in custody; information provided by the Saskatchewan youth custodial facilities; staff at Saskatchewan Social Services, Health and Education; and legislation and policy documents.

Examination of the individual complaints and determination of the issues produced some central themes: overcrowding, standards and adherence to standards, and administrative fairness. These are detailed below.

A. Overcrowding

Overcrowding appeared to be a significant barrier to achieving the objectives of the Youth Model and has a number of impacts. Overcrowding caused many of the youth to be transferred from one facility to another, sometimes extensively. The rules and procedures were not the same from one facility to the next and continuity in education, treatment and relationships with staff and peers was disrupted. Transfers also increased the distance the youth were from family and other significant people. As well, curtailment of activities or room confinement that routinely occurs when youth are admitted or transferred, along with the practice of downgrading levels were perceived as punishments by residents, irrespective of the reason for the transfer. Transfer to jail cells, both RCMP and municipal, understandably seemed to have the greatest negative impact on these youth.

Although overcrowding issues appear to have subsided in recent years these issues are still relevant today. Youth are still being transferred from one institution to another. Programming, rules and procedures are different from one institution to another. Contact with family and their community is prevented at times due to the distance many facilities are from the youth's community. For example, if you are a female youth from a northern community and have been sentenced to an open custody disposition you may have to serve your sentence near Yorkton, many kilometers from your northern home.

B. Standards and Adherence to Standards

Standards were not in place for all aspects of the care of youth in custody and there was inconsistency in the degree of detail in the standards that existed. Where there were indications that procedures and standards were not adhered to by staff, there appeared to be at least three possible explanations:

- A lack of willingness by staff to be compliant
- Circumstances such as physical capacity or staff overload that interfered with their ability to be compliant
- Staff may not have been completely aware of required procedures.

Standards serve to regulate procedures and contribute to fairness of treatment for all youth in the justice system. Our 1999 review of complaints indicated that there was inconsistency in the standards that existed. This also remains a concern today.

C. Administrative Fairness

Subscription to administrative fairness in dealing with youth in conflict with the law is evident from the Youth Model. However, the concerns expressed by youth in custody indicated that fairness is not always seen to prevail. Much of the interaction process in youth justice is subjective and discretionary.

In the youth custody facilities, negative staff/resident interaction was identified as the most frequent source of concern in the Children's Advocate Office files, followed by discipline, and case management. Disrespectful, discriminatory and unfair-treatment were factors in many of these complaints, as well as the inability for youth to make themselves heard.

Ensuring administrative fairness and respect at each stage is recognized as a difficult task. The number of players involved, the accountability of each to a different administrative level of government and the latitude for subjective and discretionary treatment are all factors. There also was a need for enhanced appeal processes to be put into place. Residents were not routinely informed of the procedures and they were not consistently applied.

In summary, there appeared to be a significant inconsistency between procedures and treatment of youth at the different facilities. Some of these differences were positive, the result of unique initiatives or qualities on the part of the particular facility, but others were not. Of greatest concern were the differences that are the result of some facilities not meeting certain standards. Some of the differences were confusing to the youth, especially when they were transferred frequently. Sometimes the inconsistencies meant that the youth have fewer opportunities for access to treatment, education, vocational training or family contacts.

The findings of this review were reported in our 1999 Children's Advocate Office annual report entitled *Time to Act*. In addition to reporting the findings, the CAO urged government to introduce consistent standards of care for youth in custody, including:

- introduce consistent standards in all youth facilities
- provide every young person with an orientation to their rights and responsibilities
- develop discipline policies that ensure due process and opportunity for appeals
- reduce the over utilization of youth custody facilities
- involve young people in programs that will enable them to succeed in the community after discharge
- involve the young person's community in planning for their reintegration.

It is important to note that we have seen significant changes to some of the practices and policies in some of the youth facilities since the completion of our 1999 review.

Policies have been introduced in the past few years that address some of the issues, particularly policies regarding the use of discipline and appeals. However, it has been our experience that these policies are still inconsistently applied and that youth are not fully aware of their rights in relation to these policies.

3. Special Report: Investigations at Provincial Youth Custody Facilities

In 2000, the CAO investigated two complaints from youth concerning reports of unfair and unreasonable treatment while in custody of a provincial youth custody facility. These reports mirrored the concerns that had previously been identified by the CAO. At the request of the two youth concerned the CAO formally investigated the situations.

A. JH Investigation

JH complained to the Children's Advocate Office that he was subjected to unfair treatment while in a secure custody facility. The CAO investigation resulted in 10 recommendations, which were intended to improve the treatment of youth. They addressed the need for:

- A thorough policy review and consistent application of policy across all Saskatchewan facilities, specifically in the areas of segregation and use of extraordinary restraints.
- The need to discontinue the use of restraints while a youth is in segregation with exceptions strictly restricted to situations where a youth was assessed by a mental health professional as being at immediate risk of self-harm.
- Psychological and psychiatric services to assist youth and staff to deal with problem behaviors.
- Improved record keeping and the need to comply with existing policy and standards.
- Implementation of the recommendations from a previous review of the facility program concluded in 1999.
- The development of a community-based advisory board to offer input into programming and policy at the facility.

B. IR Investigation

IR was a 15 year old female residing in a secure custody facility. She complained that she had been unfairly removed from her room, put in segregation and subjected to unnecessary force, which caused her injury. She further had complained that she was subsequently denied adequate medical attention and that she unfairly held in continued segregation.

The recommendations from the IR investigation addressed the need for:

- Consistent provincial policy between all Saskatchewan youth facilities.
- Specific policy and standards in the areas of segregation, use of force, compliance with policy, and appeal processes.
- A standard of care that recognizes the need for single room space for all youth detained, particularly female detainees.
- Ongoing staff training about illicit drug use.

4. Canadian Council of Provincial Child and Youth Advocates (CCPCYA)

In addition to the 1999 review and the IR and JH Investigation, the Children's Advocate Office has been working to address issues facing youth in conflict with the law at the national level.

The CCPCYA is an alliance of provincially appointed children's advocates from the provinces of Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland; the Nova Scotia Children's Ombudsman, the Commission des droits de la personne et des droits de la jeunesse from the province of Quebec; and the British Columbia Child and Youth Officer. Although the mandate of each of the children's advocates differs, we share a common commitment to further the voice, rights and dignity of children. Through the Council, the children's advocates identify issues of mutual concern and strive to develop ways to address issues at a national level.

The CCYPCA has made several presentations to the Standing Committees of the House of Commons and the Senate on the *Youth Criminal Justice Act*. Recently the CCYPCA has undertaken a national research project, Youth Consultation on Secure Care, a review of youth experiences in secure custody. The consultation is a multi-site initiative that seeks youth feedback regarding their care in secure custody facilities. The results of this research will provide a snapshot view of youth perception of care in facilities across Canada and will provide voice to youth who are serving a secure custody disposition. With university partners, the Council will report the results in order to inform national and regional programs/policies and standards. Although the work of this project is just underway, we can provide some of the initial youth perceptions from the interviews we have undertaken in Saskatchewan.

What is important to note is that the youth we have spoken to are still experiencing the same concerns and issues that were presented in our 1999 review, in the investigations concluded in 2000, and by callers to our office. Youth have reported concerns over:

- being transferred from one facility to another;
- inconsistent programming from one facility to another;
- rule and participation expectations differ from one facility to another.

There have been some improvements and there are initiatives underway that provide some reason for optimism. However issues still remain. The results of this national project will be important for all of us to consider.

5. Systemic Advocacy Issues: Youth in Conflict with the law

One of the aims of an independent Children's Advocate is to promote respect for the rights of children. Systemic advocacy focuses on specific issues that are impacting children and youth across a service system. We work to influence legislators, policy makers and practitioners to consider the rights of children and youth when decisions and plans are being made that impact on these young people.

Issues identified for systemic advocacy are generated through a review of the individual concerns raised with the office by youth, community advocates and professionals. In our experience most of the concerns received are resolved satisfactorily and the CAO file is closed with no need for further action. However, while the individual advocacy file may be closed, broader issues may remain. There may be other children or youth who continue to be impacted by the law, policy or practice that was identified in one or more individual files.

The Children's Advocate Office has currently identified four systemic issues that impact youth in conflict with the justice system. They are as follows:

- Standards of care in Residential custody and Family Service facilities
- Treatment of youth held in RCMP cells and/or waiting to be transported by the RCMP
- Supervision of youth in provincial court cells
- Educational experiences of youth in custody facilities

A. Standards of care in Residential Custody and Family Service Facilities

The CAO receives numerous calls each year from youth who are concerned about the programs and services provided to them in residential facilities such as open and secure custody facilities, group homes and other treatment facilities. There have been significant changes and improvements to the facilities, policies and to programs provided in residential facilities in the past few years. These are very much welcomed by the Children's Advocate Office. However, there are still areas requiring improvement.

Specific systemic concerns identified concerning standards of care in residential facilities include:

- Residential facilities operated by the DSS are not required to comply with the basic facility standards outlined in *The Residential Services Act*.
- Services at these facilities are provided in accordance with a set of policies, many of which establish appropriate levels of service and care for the children and youth. However, the existing policies are not consistently applied across facilities.
- ICFS agencies have recently established a number of group homes intended to provide, at minimum, an equivalent level of service as is provided by government operated residential facilities. The standards of care in ICFS facilities is an emerging issue in the CAO.

B. Treatment of youth held in RCMP cells and/or waiting to be transported by the RCMP.

Concerns have been raised regarding the treatment of youth who are being held for lengthy periods of time in RCMP cells while they are waiting to appear in a provincial court or to be transferred to a youth facility. These facilities are designed to hold youth for no more than several hours and are not designed for lengthy stays. Issues include:

- Limited and usually no access to family visits, exercise, school, and appropriate options to maintain personal hygiene; and
- Safety of youth in relation to adult prisoners who are being transported with the youth.

One recent example from August 2002 involves a young aboriginal girl who had just turned 13. She was on remand for a total of 55 days, and of those 55 days she was held for 27 days in RCMP cells, with one period of time extending 19 days. You may want to visit an RCMP detachment and sit in one of their holding cells to understand the impact of this situation. Remember this girl had just turned 13. Youth in Saskatchewan continue to experience similar situations in RCMP cells throughout the province.

C. The supervision of youth in provincial court cells.

The supervision of youth in provincial court cells continues to be of concern since the first complaint was received in 1996. The issues include the overcrowded conditions in poorly designed, inadequate facilities particularly in circuit courts. Youth have contacted the office with concerns for their safety while being held in the provincial court holding cells. Issues include:

- Intimidation or assaults by other youth;
- Long waits;
- General staff and youth safety;
- Property damage;
- Over-crowding; and
- Limited access to private toilets.

The Children's Advocate Office has persistently raised this issue. In some areas there have been improvements. However in other areas the issues are persistent and not resolved. In 2001, the Saskatchewan Court Securities Review Committee released a comprehensive report. The report's recommendations, if acted upon, would alleviate many of the issues that have been repeatedly identified to the Children's Advocate Office.

D. Educational experiences of youth in Custody Facilities

The Children's Advocate Office first identified access to appropriate educational programs in secure custody facilities to Social Services in 1998. The issues spoke to the need to have youth in secure custody or other residential facilities to have access to appropriate, fully accredited educational programs that are at least equivalent to those provided in the community by a board of education. The systemic issues identified include:

- Concerns regarding how *The Education Act* is applied for youth who are attending an educational program in a secure custody facility.
- The provision of educational services for youth in custody facilities. Issues include:
 - Program needs;
 - Resources for youth with high needs and special educational requirements; and
 - Accreditation standards.

Each of these four systemic issues is discussed in detail in the 2001 Children's Advocate Office Annual Report, which is also included in your information package.

II. What examples of Successes or Positive programs have you seen?

While, we have noted many issues that need to be addressed there are positive initiatives that we need to build on. Some youth have spoken positively to the CAO about their experiences with the justice system.

A. Program Initiatives

Youth have commented positively on the program developments that have occurred in programs offered at Nisbet Youth Centre. This work-training program is unique at the present time in secure custody programming in Saskatchewan. Nisbet has partnered with the business community in developing and providing programming. The youth are supported in a variety of job training programs, such as forestry, cooking and highway maintenance. They receive job skills that will often provide an opportunity for employment after their custody sentence expires. Equally important is the support they receive from the staff at Nisbet while attending their chosen job training activity. Recently this support has been extended to youth after they complete their sentence.

The feedback from youth is that the program offered at Nisbet has been very positive. The only criticism that we have heard is that the program is only offered at Nisbet Youth Centre and should be also be offered at other facilities.

B. Education

The young offender system has recognized the need to have all of their secure custody education programming accredited. Previously youth serving secure custody sentences attended school within the facility and inconsistently received credit or no credit for their work. The system recognized this as a concern and is addressing this issue.

C. Safety, Support and Moving On

Youth have also indicated that although there are ongoing practice and programming concerns, they feel that they are generally safe while in custody. They feel supported by staff and feel a commitment from staff to support them in changing their behaviour. What has been discouraging for some youth is the thought of moving out from the institution. Some youth have expressed a concern that they are not welcome back in their community. They realize that their communities have very little support to offer them to ensure their successful reintegration. This is even more concerning for the youth who are permanent or long-term wards of the government, who often have limited supports upon their discharge.

In 1999 the Department of Social Services supported the development of and the ongoing support of the Saskatchewan Youth in Care and Custody Network. This network provides support to youth in and from custody and care. They are a “by youth for youth” organization. This network exists to promote and give opportunity to youth to find their voices and regain control over their lives through mutual support. They also exist to assist in voicing the opinions and concerns of youth in and from custody and care and to promote the improvement of services for this group of young people.

D. Policy and Practice

As mentioned there continues to be changes to policy and practice in the young offender system. There is, within the system, a positive desire to provide high quality care for the youth both in custody and in their communities. Unfortunately, the system is, in our opinion, resource challenged.

E. Prevention Programs

Although not directly related to youth justice, recent community and government initiatives focusing on prevention of youth involvement in crime are seen as very positive. A few examples include:

- **The Kids First.** Directed toward providing early childhood supports for vulnerable children up to the age of five and their families with the goal of preventing many of the social, educational and health problems faced by Saskatchewan children. A key component of the program is pre-natal assistance for pregnant women with substance abuse problems. This is an important issue in the area of youth justice as it is estimated that a significant number of youth within the justice system are affected by Fetal Alcohol Syndrome (FAS).
- **Saskatoon Success by Six Working Group.** Through an integrated community action plan, this community-based program provides supports to strengthen the well-being of children prenatal to age six and their families, helping all children to succeed for life.
- **Building Independence.** This Saskatchewan Government program provides financial assistance to working families to reduce their reliance on social assistance. Recent provincial government figures have shown a reduction in the number of Saskatchewan families on SAP.
- **Saskatoon Communities for Children, Child Poverty Working Group.** Recent attention at the provincial and local levels to address the issue of child poverty has been very encouraging. It should be noted that according to the campaign 2000 report card on Child Poverty in Canada (1999), Saskatchewan is the only province where the child poverty rate has actually decreased in the last ten years.

III. How can the justice system be improved?

This is, of course, the key question you are exploring with the work of your Commission. Our Office is very interested in the recommendations that you will be making in this regard and offer, for your consideration, our thoughts on what can be done to improve the justice system as it relates to children and youth.

1. Need for Standards for Youth in Custody in Canada:

We have already raised the need for clear standards of care. How might these standards differ from the many policies and procedures that now exist? What we are seeking are clear outcome based standards, not just statements to ensure procedural regularity or consistency. We need standards to ensure that young people who have developmental, mental health or addictions issues receive comprehensive assessments and rehabilitation plans that actually meet their individual needs; that the recreational, educational and other age-appropriate needs of these young people are met at an optimal level not a minimal level. We need to ensure that reintegration plans are made with the youth's family and community members in a way that will ensure a relative degree of success for the young person. We need to establish standards with measurable goals and then measure how successfully the goals have been met. This is a national issue. Cesaroni (2001) points out that "Canada has no standards, procedural guidelines, or protocols for best practices in the care of youths in custody" and that "without standards, issues may arise which can create further difficulty for youth who are under the care of the state." Cesaroni goes on to remind us "when the state assumes responsibility for a child it must be held accountable for far stricter standards than are the parents who normally care for children. Holding the state accountable means, however, that there needs to be a standard against which to measure performance."

The *Youth Criminal Justice Act* may be the opportunity we need to establish much needed standards of care for youth in custody. This legislation provides a framework for the development of standards and we think the development and implementation of explicit measurable standards would significantly improve the justice system for youth.

2. Adequate resources and support:

Clearly, in order to meet the expectations of the *Youth Criminal Justice Act* and reduce the Saskatchewan youth incarceration rate, more resources are required in the community. Resources do not necessary only mean more money. Community members need to make a commitment to making a difference with and for the youth in their community. It is shocking to consider that in Saskatchewan in 1998-99, there was one case resulting in custody for every 47 youths in our province. Compare this to Quebec where there was one case for every 220 youth in the general population and you know that the rate of placing youth in custody in Saskatchewan is a very serious problem. We also know that aboriginal youth are significantly over-represented in this group of youth.

With this information, we call on community members, including First Nation and Métis Nation leaders to commit resources and energy to community supports for children and youth. Without community engagement on this issue, the Saskatchewan custody rate will continue to be one of the highest in Canada. These young people need more than our rhetoric — they need us to include them meaningfully in schools, in community recreation programs, in decision-making processes.

3. Opportunities with the *Youth Criminal Justice Act*

Included in your information package is a copy of a letter I sent to Minister Glenn Hagel regarding the discretionary provisions in the YCJA for provinces. I raised my concerns about:

- lowering the age of presumption;
- the lack of clarity about what it will mean to refer a young person to a child welfare service and what this will mean to the child;
- the need to properly resource the expanded role of youth workers; and
- the need for standards of care.

I am encouraged by some of the measures I understand are being considered by our province as they prepare to introduce the YCJA and I have continued concerns about some decisions. I urge you, as a Commission, to review this Act carefully and to fully consider the potential positive impact many of the sections could have if they were fully operationalized in Saskatchewan. Community conferencing, careful reintegration plans, many options for diversion could all make a meaningful difference for these youth if these activities were fully supported and implemented.

Summary:

In closing, we want to once again thank you for taking this time for us today. We have attempted to present to you some of our primary concerns, knowing that, with our limited time, there are many more issues that could be outlined. We are very supportive of your work and look forward to your recommendations, which will be thoughtful and inclusive of the many voices you have heard throughout your deliberations. We welcome your comment and questions.