

1992 BILL 321

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 321

CHILDREN'S ADVOCATE ACT

MRS. HEWES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 321
Mrs. Hewes

BILL 321

1992

CHILDREN'S ADVOCATE ACT

(Assented to _____, 1992)
HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definition

1 In this Act,

(a) "agency" means a Provincial agency as defined in section 1 of the *Financial Administration Act* but does not include:

(i) the board of a university under the *Universities Act*,

(ii) the board of a public college under the *Colleges Act*,

(iii) the Governors of the Banff Centre for Continuing Education,

(iv) the board of management of a Provincial General Hospital under the *Provincial General Hospitals Act*,

(v) the board of a technical institute under the *Technical Institutes Act*;

(b) "department" means a department as defined in section 1 of the *Financial Administration Act*;

(c) "Minister" means a member of the Executive Council;

(d) "Select Standing Committee" means the Select Standing Committee on Legislative Offices.

Appointment	<p>2(1) There shall be appointed, as an officer of the Legislature, a commissioner called the Children's Advocate who shall be responsible to children receiving services under any Acts.</p> <p>(2) Subject to section 7, the Lieutenant Governor in Council shall appoint the Advocate on the recommendation of the Legislative Assembly.</p>
Restriction	<p>3(1) The Advocate may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Advocate, or engage in any occupation for reward outside the duties of his office.</p> <p>(2) The Advocate must be a Canadian citizen.</p>
Term of office	<p>4 Unless his office sooner becomes vacant, a person appointed as Advocate holds office for 5 years,</p> <p>(a) from the date of his appointment under section 2, or</p> <p>(b) from the date his appointment under section 7 is confirmed under that section,</p> <p>and continues to hold office after the expiry of his term of office until he is reappointed, his successor is appointed or a period of 6 months has expired, whichever occurs first.</p>
Resignation	<p>5 The Advocate may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.</p>
Suspension or removal from office	<p>6(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Advocate from his office for disability, neglect of duty, misconduct or bankruptcy.</p> <p>(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may suspend the Advocate from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.</p>

Vacancy in office	<p>7(1) If the Advocate dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.</p> <p>(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.</p> <p>(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may appoint an Advocate to fill the vacancy and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Legislative Assembly.</p> <p>(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of Advocate.</p>
Salary	<p>8(1) Provided funds are allocated by the Legislative Assembly for the purpose, the Advocate shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.</p> <p>(2) The Advocate shall receive similar benefits to those provided to Deputy Ministers.</p>
Oath of office	<p>9(1) Before entering on his duties, the Advocate shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with section 19(2) or section 22(3) and (4), divulge any information received by him under this Act.</p> <p>(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.</p>
Office of the Advocate	<p>10(1) Provided funds are allocated by the Legislative Assembly for the purpose, there shall be a department of the public service of Alberta called the Office of the Children's Advocate consisting of the Advocate and the employees appointed pursuant to the <i>Public Service Act</i> to assist the Advocate in the efficient carrying out of his functions under this Act.</p>

(2) On the recommendation of the Advocate, the Select Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Advocate or any particular employee or class of employees in the Office of the Advocate.

(3) An order made under subsection (2)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) The *Regulations Act* does not apply to orders made under subsection (2).

(5) The chairman of the Select Standing Committee shall lay a copy of each order made under subsection (2) before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(6) Every person holding an office or appointment under the Advocate shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Advocate, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

Financing of
operations

10(1) The Advocate shall submit annually to the Select Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Advocate in that fiscal year.

(2) The Select Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on completion of the review, the chairman of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Assembly.

Functions

11(1) It is the function and duty of the Advocate to investigate any decision or recommendation made, including any

recommendation made to a Minister, or any act done or omitted, relating to a child receiving services under any Act, in or by any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Advocate may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Advocate by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final,

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(4) Without limiting subsection (1), any committee of the Legislative Assembly may at any time refer to the Advocate, for investigation and report by him, any petition that is before that committee for consideration or any matter to which the petition relates and, in that case, the Advocate shall

(a) subject to any special directions of the committee, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the committee that he thinks fit, but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(5) Without limiting subsection (1), a Minister may at any time by order refer any matter to the Advocate for investigation and report by him and, in that case, the Advocate may

(a) subject to any special directions of the Minister, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the Minister that he thinks fit,

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(6) An order made by a Minister under subsection (5) shall be published forthwith in The Alberta Gazette.

Jurisdiction
restricted

12(1) Nothing in this Act authorizes the Advocate to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Advocate has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

Complaint to
Advocate

13 Notwithstanding any Act, when a letter of complaint is received by

(a) a young offender in custody on a charge or after conviction of any offence, or

(b) a patient of:

(i) a facility within the meaning of the *Mental Health Act*, or

(ii) a place established under section 3(1) of that Act,

(c) is addressed to the Advocate,

it shall be immediately forwarded, unopened, to the Advocate by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

Refusal to
investigate

14(1) If in the course of the investigation of any complaint it appears to the Advocate

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Advocate may, in his discretion, refuse to investigate or cease to investigate any complaint if in his opinion,

(a) the subject matter of the complaint is trivial,

(b) the complaint is frivolous or vexatious or is not made in good faith, or

(c) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) When the Advocate decides not to investigate or to cease to investigate a complaint, he shall inform the complainant of his decision and he may, if he thinks fit, state his reasons for his decision.

Notice of
investigation

15(1) Before investigating any matter under this Act, the Advocate shall inform the deputy minister of the department or the administrative head of the agency affected, as the case may be, of his intention to make the investigation.

(2) The Advocate may, in his discretion, at any time during or after an investigation consult any Minister who is concerned in the matter of the investigation.

(3) If, during or after an investigation, the Advocate is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or agency, he shall refer the matter to the deputy minister of the department or the administrative head of the agency, as the case may be.

Conduct at
investigation

16(1) Every investigation by the Advocate under this Act shall be conducted in private.

(2) The Advocate may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

(3) Subject to section 27(3), it is not necessary for the Advocate to hold any hearing and no person is entitled as of right to be heard by the Advocate.

(4) Subject to this Act and any rules made under section 28, the Advocate may regulate his procedure in any manner he thinks fit.

Evidence at
investigation

17(1) Subject to this section and section 18, the Advocate may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

(2) When the Advocate requires the production of a document, paper or thing under subsection (1), he may require it to be produced at a place designated by him and may require that it be left in his possession for the purposes of his investigation but, on the request of the deputy minister of the department or the administrative head of the agency, the Advocate shall return the document, paper or thing to the department or agency as quickly as possible, but not later than 48 hours after the receipt of the request, subject to his right to again require its production

in accordance with this section.

(3) The Advocate may summon before him and examine on oath

(a) any person who is an officer or employee or member of any department or agency and who in the Advocate's opinion is able to give any information mentioned in subsection (1),

(b) any complainant, and

(c) any other person who in the Advocate's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Subject to subsection (5), a person who is bound by an Act to maintain secrecy in relation to, or not to disclose, any matter is not required to

(a) supply any information to or answer any question put by the Advocate in relation to that matter, or

(b) produce to the Advocate any document, paper or thing relating to it,

if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of a complainant, any person to whom subsection (4) applies may be required by the Advocate to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with the requirement.

(6) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

(7) Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Advocate is admissible in evidence against any person in any court or at any

inquiry or in any other proceedings, and no evidence in respect of proceedings before the Advocate shall be given against any person.

(8) No person is liable to prosecution for an offence against any Act by reason of his compliance with any requirement of the Advocate under this section.

Disclosures
restricted

18(1) When the Attorney General certifies that the giving of any restricted information or the answering of any question or the production for any document, paper or thing might involve the disclosure of

(a) the deliberations of the Executive Council, or

(b) proceedings of the Executive Council or a committee of it relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Advocate shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of the certificate to the Legislature.

(2) Subject to subsection (1), the rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Advocate.

(3) Nothing in this Act authorizes the Advocate to require any person to produce a pre-sentence report or to furnish any information contained in or relating to a pre-sentence report.

Maintenance of
secrecy

19(1) The Advocate and every person holding an office or appointment under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Advocate may disclose in any report made by him under this Act any matters that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

Procedure after
investigation

20(1) This section applies when, after making an investigation under this Act, the Advocate is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) was wrong.

(2) This section also applies when the Advocate is of the opinion:

- (a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised
 - (i) for an improper purpose,
 - (ii) on irrelevant grounds, or
 - (iii) on the taking into account of irrelevant considerations, or
- (b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Advocate is of the opinion:

- (a) that the matter should be referred to the appropriate authority for further consideration,
- (b) that the omission should be rectified,
- (c) that the decision should be cancelled or varied,

- (d) that any practice on which the decision, recommendation, act or omission was based should be altered,
- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,
- (f) that reasons should have been given for the decision, or
- (g) that any other steps should be taken,

the Advocate shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Advocate to be adequate and appropriate, the Advocate, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Advocate shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

Results of
investigation to
complainant

21(1) If the Advocate makes a recommendation under section 20(3) and no action that seems to the Advocate to be adequate and appropriate is taken on the recommendation within a reasonable time, the Advocate shall inform the complainant of his recommendation and make whatever comments on the matter he thinks fit.

(2) The Advocate shall in any case inform the complainant, in the manner and at the time he thinks proper, of the result of the investigation.

Other inquiries

22(1) No report or recommendation of the Advocate and no investigation or other proceeding under this Act leading to a report or recommendation of the Advocate shall be made the

subject of

- (a) an inquiry under the *Public Inquiries Act*, or
- (b) an inquiry, investigation, review or hearing by any person,
or

body pursuant to any other Act.

(2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by

- (a) the Legislative Assembly,
- (b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly,
- (c) a commissioner under the *Public Inquiries Act*, if a resolution of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act, or
- (d) any other person or body appointed by a resolution of the Legislative Assembly,

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

(3) Notwithstanding section 19 or any oath taken under section 9 or 10 but subject to subsection (4),

- (a) the Advocate or a former Advocate, or
- (b) any person who holds or formerly held an office or appointment under the Advocate or a former Advocate,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his knowledge in the course of the administration of this Act.

(4) The Advocate or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

(a) shall not answer any question or be compelled to answer any question, and

(b) shall not produce or be compelled to produce any document, paper or thing,

when the Advocate or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Advocate or any person who holds or formerly held an office or appointment under the Advocate or a former Advocate is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summoned that witness shall forthwith give notice of that fact to the Advocate that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

Proceedings not
subject to review

23 No proceedings of the Advocate shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Advocate shall be challenged, reviewed, quashed or called in question in any court.

Proceedings
privileged

24(1) No proceedings lie against the Advocate or against any person holding an office or appointment under the Advocate for any thing he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

(2) Neither the Advocate nor any person holding an office or appointment under the Advocate shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Advocate under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act* any report made by the Advocate under this Act shall be deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast

shall be deemed to be privileged.

Entry of premises

25(1) For the purposes of this Act, the Advocate may at any time enter on any premises occupied by any department or agency and inspect the premises and, subject to sections 17 and 18, carry out in those premises any investigation that is within his jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Advocate shall notify the deputy minister of the department or, as the case may require, the administrative head of the agency that occupies the premises of his intention to do so.

Delegation of powers

26(1) With the prior approval of the Select Standing Committee, the Advocate may, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) A delegation may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Advocate.

(4) A delegation may be made subject to any restrictions and conditions the Advocate thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Advocate by whom it was made ceasing to hold office, continues to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Advocate by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power.

Annual report

27(1) The Advocate shall in each year make a report to the Legislature on the exercise of his functions under this Act.

(2) The Advocate may, from time to time, in the public interest or in the interests of any person or department or agency publish reports relating

(a) generally to the exercise of his functions under this Act,
or

(b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Advocate shall not, in a report made under this section, express any opinion or make any comment that is adverse to

(a) any department or any officer or employee of a department,

(b) any agency or any member or employee of an agency, or

(c) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Advocate has given that department, agency, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

Rules for guidance

28 The Legislative Assembly may

(a) of its own volition, or

(b) on the recommendation of the Select Standing Committee,

make rules for the guidance of the Advocate in the exercise of his functions and duties.

Storage of and
access to files

29(1) The Advocate may place any file relating to a complaint made to or an investigation made by the Advocate in the Provincial Archives of Alberta at any time after 2 years have elapsed from the date on which the file was closed, if access to the public records in the area in which the files are placed is prohibited or restricted by regulations under section 21 of the *Department of Public Works, Supply and Services Act*.

(2) After 6 years have elapsed from the date on which it is

closed

(a) a file relating to a complaint for which the Advocate declined to accept jurisdiction may be destroyed, and

(b) any other file made by the Advocate relating to a complaint or investigation under this Act may, after it is microfilmed, be destroyed and the microfilm stored in the Provincial Archives.

(3) No person, other than the Advocate and the staff of the Office of the Advocate, shall have access to the information contained in a file or a microfilm of a file stored in the Provincial Archives under this section.

Offences and
penalties

30 Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Advocate or any other person in the exercise of his powers under this Act,

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Advocate or any other person under this Act, or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Advocate or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable to a fine of not more than \$1000 and in default of payment to imprisonment for a term not exceeding 3 months.

Other laws

31 The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

(a) any remedy or right of appeal or objection is provided for any person, or

(b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.