



Third Session - Thirty-Sixth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Privileges and Elections

Chairperson
Mr. Peter Dyck
Constituency of Pembina



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Monday, June 23, 1997

TIME – 3:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Peter Dyck (Pembina)

VICE-CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

ATTENDANCE - 9 – QUORUM - 6

Members of the Committee present:

Hon. Mrs. Mitchelson, Hon. Mr. Radcliffe

Ms. Cerilli, Messrs. Dyck, Helwer, Kowalski, Martindale, Tweed, Ms. Wowchuk

MATTERS UNDER DISCUSSION:

The Report of the Subcommittee established to review the operation of the Children's Advocate provisions of The Child and Family Services Act.

Mr. Chairperson: Order, please. Good afternoon. Will the Standing Committee on Privileges and Elections please come to order. This afternoon the committee will be considering the Report of the Subcommittee on Privileges and Elections that held public hearings and conducted a review of the Children's Advocate section of The Child and Family Services Act.

As I was the Chairperson of the subcommittee, I would like to make a presentation to the Privileges and Elections committee about the process and the report of the subcommittee. To accomplish that task, I will turn the Chair over to the Vice-Chairperson of this committee, Mr. Tweed, who will preside over the committee while I make this presentation to the committee. Is that agreed? [agreed]

(Mr. Mervin Tweed, Vice-Chairperson, in the Chair)

Mr. Peter Dyck (Chairperson of the Subcommittee of the Standing Committee on Privileges and Elections): First of all, before I present the report, I want to thank a few people who have helped to complete this report. First of all, I will start with Patricia Chaychuk, she is the Clerk Assistant, did an excellent job of organizing everything. Thank you very much. To Bruce Unfried who also assisted us, to all the Hansard people who have been working on our behalf. Then to the committee, it was a good committee. We had an enjoyable time together, and I think at the end of the day, we would all reflect on it and say we had an excellent time.

There is one disappointment that I have, and I had hoped that we would have been able to come with a consensus report, and that is not the case, the fact. I thought that when five people heard things, we should be able to come to some sort of a consensus, but on the other hand, I think though the report will reflect and indicate to you what the committee heard.

So I am going to ask you to turn to page one, and simply it is the preamble which was agreed upon by everyone, then the written submissions. Again, these were the people who gave us their reports.

Then if you move to page 4, this was the Mandate to Review the Children's Advocate Legislation, and then you have the introduction there; I will not read it. Then the B part, The Role of the Children's Advocate, which we went through as well. Then, of course, we got into the parts of the legislation. I will leave that also for your perusal.

I will move on to page seven, and what I am going to do at this time is I am simply going to read to you the recommendations that your committee came up with.

Recommendation No. 1.1 The Office of the Children's Advocate report directly to a committee of the Legislature.

1.2 The Children's Advocate to be appointed for a specific term of office, the term of office will consist of

two three-year terms with a review of the position being completed after the initial three-year period.

1.3 The Office of the Children's Advocate maintain its present responsibility for all children within the Child and Family Services system. There is a related need to ensure that the Children's Advocate continues to have the authority to receive complaints from across all government departments and forward these referrals to the appropriate agencies/persons for resolution (i.e., a referral may be made to the Office of the Ombudsman and screened by the investigator, Child and Adolescent Services.)

1.4 In cases where the Children's Advocate and agency continue to disagree, a referral of the case be made to the director of Child and Family Services for its resolution under The Child and Family Services Act. The outcome of such referrals should be directed to the Office of Children's Advocate for inclusion in the yearly report.

1.5 The Children's Advocate must delegate its authority to ensure greater access to the services of the office to children and families in the rural/northern Manitoba. Section 8.4 of the present legislation reads that, and I quote: The Children's Advocate may in writing authorize any person to perform any of the duties or exercise any of the powers of the Children's Advocate; unquote.

Then 1.6, that the Office of the Children's Advocate, the Department of Family Services and other key stakeholders commence a process to develop measures which would evaluate the goals, objectives and outcomes of the Child and Family Services system. The status of this process will be included in the next annual report of the Children's Advocate.

That, Mr. Chairman, is the report that we have, and you will find an addendum attached to that. I will not respond to that. I suspect that possibly Mr. Martindale may want to make a few comments about that, but on the other hand, I want to clearly indicate that out of a committee of five that four were in favour of these recommendations, and the addendum, as you have it here, is reflecting the feelings of the New Democratic Party. So, unless there are any questions, I would

recommend that we recommend this report to the House.

* (1600)

Mr. Doug Martindale (Burrows): I anticipate that we are not going to debate all the recommendations, so I would like to briefly comment on the three areas where we submitted a minority report. I will try to do that fairly briefly, because I think the government members know already why we do not support it.

The first one, 1.3, has to do with the area of responsibility. We heard from numerous presenters that the area of responsibility should be expanded to include all government departments and people specifically referred on several occasions to Health, Justice and Education. However, we think that the Children's Advocate should have the responsibility and the jurisdiction to look into all complaints regarding children. That is why we recommended a different 1.3, and I will just read the first part of it. It says: The responsibilities of the Children's Advocates office be expanded to all areas of government included in and including the Children and Youth Secretariat and all agencies serving children funded by the provincial government.

On 1.4, numerous presenters commented on the fact that the Children's Advocate can only investigate and make recommendations. This is one area where there is a problem, and the Children's Advocate pointed this out and numerous presenters pointed out, and that is that there is no compliance mechanism. The committee debated the need for a compliance mechanism and what that would be. Many of the presenters recommended mediation techniques, and in an earlier draft of the all-party committee report, mediation was going to be recommended but the committee changed its mind. So our caucus stuck with the views of the presenters and recommended the use of mediation, conciliation or other culturally appropriate dispute resolution services and said that failure to resolve the issue at this level will necessitate a referral to a third-party arbitrator for a binding resolution. We feel that this responds to the recommendations of many presenters and does give the advocate actually a lot more authority but not in a Draconian sense but in a way that would try to resolve disputes between the Advocate's office and an agency.

Also, under 1.5, many presenters, especially those people who made presentations via teleconferencing from Brandon and Dauphin and the presenters in Thompson, felt quite strongly about the lack of a presence of the Children's Advocate office in rural/northern Manitoba. In fact, presenters said that they were very uninformed about even the existence of the Children's Advocate office. We did hear that the posters were not put up in organizations serving children. We heard one story where an agency was sent the poster and refused to put it up. So we have a problem of communication and advertising, but we also have a problem of the inability of northern Manitobans and rural Manitobans to access the services of the Children's Advocate. We believe that the only way to remedy this is to expand the service, and so we recommend that the Children's Advocate's office must have authorities to ensure greater access to services for children and families across the province by establishing offices in rural and northern Manitoba with attention to the diversity of cultures in Manitoba.

Further, the needs of aboriginal children and families must be addressed. As noted in the Postl report, the catalogue of ill health and social burden of aboriginal children have some common antecedents that lie in poverty, racism, oppression and have their own extensive history.

I would like to add, as well, that many of the presenters pointed out that there needs to be not only aboriginal people on the staff of the Children's Advocate's office but staff who speak First Nation languages. Hopefully, if the minister and the government chose to expand the budget, the office and the services of the Children's Advocate, they would have the ability to hire staff who do speak First Nation languages.

I guess I should comment in a positive way that we did support three of the recommendations, the first one being that the office be more independent by reporting to the Legislative Assembly. This was a recommendation that we had previously made in private members' bills in the Legislature, so we are pleased that the government members agree with this recommendation. We certainly hope and look forward to seeing the government adopt this recommendation

when they bring in amendments to the bill, hopefully, in the next session.

We also recommended, and there was all-party agreement, that the term of office would consist of two three-year terms. I believe we were patterning this after the Ombudsman's legislation. We believe that this would further enhance or even guarantee the independence of the Children's Advocate, and many people spoke to the necessity of having an independent Children's Advocate. Thank you, Mr. Chairperson.

Mr. Gary Kowalski (The Maples): As I said at an earlier subcommittee meeting, I really enjoyed this exercise. It was a pleasure to be on. It was a pleasure to hear the presentations from all over the province in regard to this matter. It was a pleasure to be on an all-party committee.

However, I think the value of all-party committees will be diminished after this exercise—the fact that we could not have a consensus report. I know after all the public presentations when we met in informal hearings, I brought forward a document with eight recommendations that are not exactly reflected in this report, but that is part of consensus building. I was able to get some of my recommendations into that consensus report, or I was able to get some degree of them in a number and some of them, to see the worth of a consensus report, I let go. I could have added this as a minority report. Then what is the sense of having an all-party committee? Then we might as well just have a government committee review legislation, bring forward a report and we could debate it in the House and in the committees. Why bother? If members of the committee do not have the authority of their caucuses to come back and develop a consensus, it is a waste of time.

The other disappointment was that I was hoping that the minister would have presented to the subcommittee. I think that would have been very valuable and would have been helpful in developing a consensus, especially there was one element that during these deliberations, because there were changes in The Child and Family Services Act that did impact on here, if the minister could have presented to the committee, I think we would have avoided that wasted effort in the recommendation that ultimately had to be changed.

As I said, this report I am comfortable in supporting. It is not my report. It does not have all my recommendations. It is a consensus. As I said, I never asked to add a minority report; I could have. There were elements—and probably politically it would have been the smart thing to do to put a minority report, so it would have made it easier to criticize any legislation that would come forward out of this, but I really believed that we were setting a precedent here as an all-party committee, that if we could have had a consensus report, then I believe the minister would have been obligated to follow directly the committee's recommendations, and any legislation that would have come out of it would have mirrored this report. As it stands now, because we have a minority report, there is dissent in it. The minister would be perfectly within her rights to alter the legislation so it does not exactly reflect the report because it is not a unanimous decision. So those were my two deep regrets. I feel the majority report in here is workable. I would like to see any legislation that comes out reflect that. I have other recommendations, but I will keep those. If the legislation that is brought forward does not reflect the majority report, then I will debate it at that point, but I am disappointed there was no consensus.

Mr. Vice-Chairperson: Thank you, Mr. Kowalski.

Mr. Martindale: I have a question about the reporting to the House. Perhaps, the Chair could seek advice from the Clerk of Committees. It is my understanding that the report as circulated today will be reported to the House as it stands, so that the minority report will be part of the report of the Committee on Privileges and Elections to the House. Is that correct?

* (1610)

Mr. Vice-Chairperson: That is my understanding. Is there agreement to adopt the subcommittee report and recommend it to the House? [agreed]

Hon. Bonnie Mitchelson (Minister of Family Services): Mr. Chairperson, I do just want to thank the members of the subcommittee for the work and the commitment to listening to Manitobans and trying to come forward with a report that would reflect a consensus opinion. I, too, do have to say that I am somewhat disappointed that that process and the process that took place did not result in an all-party consensus on a direction to go. We all know that consensus building takes a commitment from all of us and know that we are not going to get our own way in absolutely every instance but, in fact, on balance people come together and try to find the best solutions.

So I would have liked to have seen a consensus report, but I am prepared to have this report forwarded to the Legislature and ultimately, I guess, government will have to make decisions on what direction we take with any future changes to the Office of the Child Advocate. So I do want to thank all members for their commitment and their contribution. Thanks, Mr. Chairperson.

Mr. Vice-Chairperson: The hour now being 4:12 p.m., committee rise.

COMMITTEE ROSE AT: 4:12 p.m.