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Substance Abuse

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Children and Adolescents with Special Needs: A Review
of Provincial British Columbian and Canadian Federal
Law and Policy Direction

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Sommaire exécutif

Ce rapport étudie la législation et les règlements gouvernementaux des gouvernements du Canada et de la Colombie-Britannique ayant un rapport ou des conséquences sur les enfants et les adolescents ayant des besoins spéciaux. Il vise à donner un aperçu de la législation, des règlements et de certaines politiques en place au sein des deux palliers de gouvernement fédéral et britanno-colombien, susceptibles d'avoir des conséquences sur la vie des enfants et des adolescents ayant des besoins spéciaux. Les zones juridictionnelles étudiées comprennent : la répartition constitutionnelle des compétences; le transfert des paiements du fédéral au provincial; la justice; l'aide sociale; l'aide à l'enfance; les services à l'enfance; la santé, dont la santé mentale; les services de toxicomanie; les services aux autochtones vivant à l'intérieur et à l'extérieur des réserves; l'éducation; l'emploi; et le logement. Ce rapport ne comprend pas l'étude de la jurisprudence pertinente. Les politiques ou règlements informels élaborés à l'échelle locale ou *ad hoc* sortaient par ailleurs du cadre du projet.

La législation et les politiques subissent des changements, en particulier lors des changements de gouvernements. Les données compilées pour cette étude ont été recueillies de décembre 2001 à avril 2002, la Colombie-Britannique ayant connu un changement de gouvernement provincial en mai 2001. Cette étude d'évaluation est précise et conforme au cadre temporel ci-dessus, mais on s'attend néanmoins à des modifications imminentes et possiblement radicales de la législation provinciale étudiée. Le rapport a en outre été limité par l'accessibilité aux politiques pertinentes. Malgré des tentatives pour avoir accès aux politiques requises (appels téléphoniques, courriels, télécopies), la tâche était d'autant plus ardue que l'étude était menée à partir de Prince George, Colombie-Britannique, qui se trouve à une grande distance de Victoria et Ottawa, les centres décisionnels gouvernementaux. Malgré les ressources dont disposaient les chercheurs, il a été impossible de mettre la main sur toutes les politiques pertinentes.

L'étude met en lumière des lacunes, des incohérences et des secteurs préoccupants en matière de législation, politiques et règlements pertinents, et conclut en présentant des éléments à prendre en compte et une série de recommandations. Ce rapport attire l'attention sur la nature décentralisée et

fragmentée de la législation, des règlements et des politiques tant au niveau du gouvernement de la Colombie-Britannique que du Canada, compte tenu surtout que cette législation, ces règlements et ces politiques portent sur des enfants et des adolescents ayant des besoins spéciaux. La loi et la politique est limitée par les frontières de zones juridictionnelles à chaque palier de gouvernement et par les mandats de chaque ministère et programme gouvernemental. Il existe une incongruité en ce qui concerne les critères d'âge d'admissibilité aux programmes, et une absence de consensus à l'égard de ce qui constitue expressément un 'besoin spécial' chez l'enfant ou l'adolescent. Le manque de politiques spécifiques et les lacunes dans les politiques actuelles créent un manque de responsabilité à l'égard des enfants et des adolescents ayant des besoins spéciaux, et de leurs familles.

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Executive Summary

This report reviews governmental legislation and regulations of the Canadian and British Columbian governments that relate to, or impact upon, children and adolescents with special needs. The purpose is to provide an overview of British Columbian and federal government legislation, regulations, and some policies that exist within the two levels of governments and which have the potential to effect the lives of children and adolescents with special needs. The jurisdictional areas reviewed include: the constitutional division of powers; transfer payments from the federal to the provincial government; justice; social assistance; child care; services to children; health, including mental health; addiction services; both on and off reserve Aboriginal services; education; employment; and housing. This report does not include a review of the relevant case law, and it was beyond the scope of the project to consider informal policies or regulations developed on a local or *ad hoc* basis.

Legislation and policy undergo changes, particularly with changes in governments. The research compiled in this review was collected between December 2001 and April 2002, and the provincial government of British Columbia shifted leadership in May 2001. This assessment and review is accurate and consistent within the above time frame, though there is an expectation of some imminent and potentially radical changes to the reviewed provincial legislation. The report is further constrained by the availability of relevant policy. Attempts were made (by telephone calls, emails, and facsimile messages) to acquire the needed policy. The task was, however, made difficult due to being located in Prince George, British Columbia, which is a great distance from Victoria and Ottawa, the centres of government decision-making. Despite resources available to the researcher, not every relevant policy could be acquired.

The review highlights gaps, inconsistencies and areas of concern in pertinent legislation, regulations, and policies, and concludes with items for consideration and a series of recommendations. The report draws attention to the de-centralized and fragmented nature of legislation, regulation, and policy at both the British Columbian and federal governments,

specifically as that legislation, regulation and policy pertain to children and adolescents with special needs. Law and policy is limited by the boundaries of jurisdictional areas at each level of government and by the mandates of each government ministry and program. There is incongruence with age criteria for program eligibility, and there is a lack of consensus regarding what specifically constitutes a 'special need' in a child or youth. With a lack of, and gaps in, specific policy, there comes a lack of accountability to children and adolescents with special needs and their families.

Introduction

This report reviews the legislation and regulations of the federal and British Columbia governments that relate to, or impact upon, children and adolescents with special needs. Also considered within this report are some accompanying policies at both levels of government. It should be recognized that at the time this report was authored (spring 2002) a state of policy flux existed, particularly in British Columbia: there was also an expectation of forthcoming radical changes to some of the information discussed in this report. Policy analysts and managers who were interviewed at both the federal and provincial levels of government spoke of policies in the process of being significantly rewritten (British Columbia) or about specific related policies not existing in their offices (mainly federal). An overall sense, therefore, came forth of some fragmentation between one program area and another, particularly with regard to the legislation, regulations, and policy in relation to children and adolescents with special needs. There also appeared to be some inconsistency between programs and various levels of government. This report discusses these gaps, reviews existing legislation and regulations at the federal and B.C. provincial level, and concludes with a series of recommendations that may be of interest to program and policy developers at both the provincial and federal level.

The process of procuring the information needed for this report is worthy of note. Despite telephone calls, emails and facsimile messages, it was challenging to access all relevant policy. The author was situated in Prince George, British Columbia, a great distance from Victoria and Ottawa, the centres of government decision-making. Even as a lawyer working in association with a research center funded by the federal government, the author found it challenging to access specific government policy information. The challenge is attributable not only to resource and time constraints, but also to the relatively isolated geographic location of Prince George. It is impossible, therefore, to not question how difficult it must be for families of children or adolescents with special needs to both access and make sense of existing law and policy, particularly those families, children and adolescents living in rural and remote parts of the country.



The Context

Special needs

For the purpose of this report, the definition of children and adolescents with special needs is as follows:

All children and adolescents who require additional public or private resources beyond those normally required to support healthy development. This definition includes children and adolescents who require additional resources because of exceptional gifts and talents, physical, sensory, cognitive and learning challenges, mental health issues as well as problems due to social, cultural, linguistic or family factors¹.

While I intend to use this understanding of children and adolescents with special needs in this report, I will take the age of adolescent to be up to and including eighteen years old.

As will become evident, this definition does not exactly correspond with the various government ministries' understanding or articulation of special needs. In addition, whereas I take adolescents to include up to eighteen years old, the age criteria attaching to the various government programs is not so consistent. These varying adolescent age parameters and special needs definitions together lead to an element of inconsistency from one government program to another.

Appreciably, a great number of laws and policies relate to children and adolescents with special needs. Federal and provincial government jurisdictional areas that potentially impact on the lives of children and adolescents with special needs and their families include: the constitutional division of powers; transfer payments from the federal to the provincial government; justice; social assistance; child care; services to children; health

¹ Centre of Excellence for Children and Adolescents with Special Needs: Revised Proposal. (February 2002). Lakehead University. Page 4.

including mental health; addiction services; Aboriginal services both on and off reserve; education; employment; and housing.

The Constitution of Canada

The *Constitution Act, 1867*² is the starting point of this review because this law establishes the split in areas of responsibility for the federal and provincial governments.

Section 92 sets out the provincial governments' jurisdiction. The areas of provincial constitutional jurisdiction potentially impacting on children and adolescents with special needs include: the establishment, maintenance and management of public and reformatory prisons in and for the province;³ the establishment, maintenance and management of hospitals, asylums and charities;⁴ property and civil rights in the province;⁵ the administration of justice in the province including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction;⁶ and generally all matters of a merely local or private nature in the province.⁷ Section 93 of the *Constitution* specifically addresses education, also an area of primary provincial jurisdiction.

Section 91 establishes the federal government's jurisdiction. According to this section, the federal government has jurisdiction over any matter not specifically falling under provincial constitutional jurisdiction. This provision allows the federal government to step in wherever there is a gap in services. In addition, the areas of federal government jurisdiction under the constitution potentially relevant to children and adolescents with special needs are: unemployment insurance⁸, and Indians and lands reserved for Indians.⁹

² *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3.

³ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 92(6)

⁴ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 92(7).

⁵ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 92(13).

⁶ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 92(14).

⁷ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 92(16).

⁸ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 91(2A).

⁹ *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, s. 91(24).

The provincial government has most of the relevant jurisdiction for enacting law that potentially impacts on children and adolescents with special needs in various ways.

The relationship between legislation, regulations and policies

At both levels of government, legislation establishes the legal framework for social policy in Canada; therefore, in the absence of a governing Act of Parliament or the Provincial Legislature, a given policy lacks the force of law. Legislation (Acts) and regulations both constitute laws. Regulations are commonly passed by governments pursuant to particular Acts. Policy represents governmental attempt to put the legislation and regulations into more concrete and specific terms for implementation. In addition, there are currently a number of policy areas not provided for by any particular law. I will argue this trend translates into less available formal and publicly accessible means of ensuring government accountability (for example, by way of court challenge).

Therefore, a review of the law, regulations and policies, most logically proceeds in the following manner:



Generally, I follow this process in this report. It should be noted that all information included in this document pertaining to the legislation and regulations **is subject to judicial interpretation in the courts at any time, before or after the writing of this report.** The terms of reference for this report do not include a review of the relevant case law. In addition, the laws are subject to amendment by the government. The policies are subject to change at any time.

The Government of British Columbia

IV

Child, family and community services

Because of its broad scope, a significant piece of legislation in terms of both children and adolescents with special needs in British Columbia is the *Child, Family and Community Service Act*.¹⁰ Although the purpose of the Act is not explicitly set out, section 2 establishes the guiding principles. The “safety and well-being of children” is the paramount consideration.¹¹ The Act establishes the context for delivery of services for families and children in the province including preventive and support services.¹² For the purpose of this Act, “child” is defined as a person under nineteen years of age, inclusive of “youths.”¹³ Under this Act, “youths” are persons from sixteen to eighteen years old. There are no definitions of any concepts related to special needs or disabilities neither in this Act nor in the accompanying regulation, *Child, Family and Community Service Regulation*.¹⁴ What this means is that the general legislative provisions apply as equally to children and adolescents with special needs and their families as they do to all other children and adolescents in the province. As I will discuss, however, the implications of this general application could be different in some instances for the families of children and adolescents with special needs. It is important to note that the services delivered by the Ministry of Children and Family Development are currently undergoing significant change. I expect that legislative, regulatory and policy changes will need to accompany these wide-sweeping service delivery changes.¹⁵

¹⁰ R.S.B.C. 1996, c. 46.

¹¹ R.S.B.C. 1996, c. 46, s. 2.

¹² R.S.B.C. 1996, c. 46, s. 3.

¹³ R.S.B.C. 1996, c. 46, s. 1.

¹⁴ B.C. Reg. 527/95; O.C. 1589/95.

¹⁵ For more information about the changes the Ministry of Children and Family Development is implementing, see <http://www.mcf.gov.bc.ca/change/transformation.htm>, accessed 4/24/02.

Family supports

The British Columbia Ministry of Children and Family Development currently has the primary responsibility for administering the *Child, Family and Community Service Act*.¹⁶ The Ministry has developed special needs programs pursuant to sections 5 and 93 of this Act. Section 5 establishes that delegated Ministry personnel can make a written agreement with a parent to assist with services to support and care for a child. These services can include, but are not limited to, services for children and youth, counseling, in-home support, parenting programs, and services to support children who witness violence. Section 93 provides the director (via delegated personnel) with the discretion to do a number of things relating to children and adolescents with special needs. These powers include:

- Providing preventive and support services to promote the Act's purposes;
- Making payments to parents of a child and/or adolescent with special needs to purchase support services so that child or adolescent can live at home;
- Establishing residential services for children and adolescents;
- Establishing services to assist communities in caring for their children and adolescents;
- and
- Making agreements for services with parents, other government agencies or community agencies.

In other words, with respect to programs specifically for children and adolescents with special needs, the Act provides the Ministry of Children and Family Development with much discretion but little detail about the contents of the programs. Because of this relatively open legislative wording, much of the specific programming and practice relating to children and adolescents with special needs is provided for at the policy level. These policies can be changed at any time without requisite public notification. More than one policy manager I contacted at the Ministry advised me that the special needs policy is currently being significantly rewritten.

¹⁶ R.S.B.C. 1996, c. 46.

As of the date of April 2002, the British Columbia Ministry for Children and Family Development services included in the *Community Support Services Policy Manual* for children and adolescents with special needs encompasses the following:¹⁷

- At Home and At Home Respite Benefits including Nursing Support Services¹⁸
- Infant Development Program
- Respite Services
- Child and Youth Care Worker Services Program
- Behavioural Support for Children with Autism
- Homemaker / Home Support Worker Program
- Parent Support for Families with Children with Special Needs
- Professional Support for Children with Special Needs.

In addition, the Ministry of Children and Family Development provides some funding for other related programs:

- Associate Family Program¹⁹
- Early Intervention Program
- School-aged Therapy Services
- Summer Programs for the Deaf / Blind
- Community Brain Injury Program.

Most of these services are delivered on a contract basis. *A Guide to Contract Management* stipulates the procedure the Ministry of Children and Family Development follows for entering into these contracts; in addition, there are a series of agreement precedents for the Ministry and service

¹⁷ Government of British Columbia. *Community Support Services Policy Manual*. (Victoria Ministry of Social Services, updated 1996). An important *caveat* on this part of the report is that the policy of the Early Childhood Development and Community Living Services Division of the Ministry of Children and Family Development is currently undergoing intensive revision; therefore, the information contained here may no longer be entirely accurate.

¹⁸ There is provision in the *Continuing Care Act*, R.S.B.C. 1996, c.70, and *Continuing Care Programs Regulation*, B.C. Reg. 146/95, for the At Home Program. See the section of this report on health.

¹⁹ The governing law for this program is the *Continuing Care Act*, R.S.B.C. 1996, c. 70 and associated *Continuing Care Programs Regulation*, B.C. Reg. 146/95 which I discuss in the health section of this report.

providers to use when arranging for the delivery of these specific services in the *Community Support Services Policy Manual*.²⁰

The At Home and At Home Respite Benefits Programs are closely related. The At Home Program provides for medical or respite assistance for the families of children with severe special needs being cared for at home. The child must be at the home more than fifty per cent of the time and not on reserve. In addition, the child must require assistance with the four needs of daily living, which are bathing, toileting, dressing and feeding.²¹ Regional committees are responsible for assessing eligibility.²² There is also an income test component to this program.²³

Nursing Support Services comprises Nursing Respite, At Home Program assessment, in School Support and Child Care Nursing Support. Eligibility is based on the following: the child is under nineteen years old; he or she requires nursing care in one of the mentioned community settings; a parent or guardian cares for all of the child's requisite care and provides current information about care requirements; and the child is deemed stable to be cared for in the community setting.²⁴ Nursing Support Services of the Ministry of Children and Family Development coordinates with regional health authorities for consultation, assessment, nursing support and family advocacy.

The Infant Development Program's stated intention is to provide home-based services to families of infants up to three years old who are at risk of developmental delay or who have a

²⁰ Government of British Columbia. *Community Support Services Policy Manual*, Chapter 3.3, (Victoria: Ministry of Social Services, updated 1996). The question of availability and delivery from region to region is beyond the scope of this report but certainly is an area worthy of further specific examination. pgs. 35-37.

²¹ Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.3-2.

²² These assessments come under the purview of the health ministry. See Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.3-1.

²³ Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.3-6. The other programs included here which involve an income test are: Respite Relief Services, Contracted Relief Services and Homemaker / Home Support Services. See Special Topics: Income testing, for instructions on the completion of the Day Care Subsidy Application / Income Test Form (S122), Government of British Columbia. *Child, Family and Community Services, Volume 2* (Victoria: Ministry of Children and Families, 1996), for income testing information.

²⁴ Government of British Columbia. *B.C. Nursing Support Services Standard Manual*, (Victoria: Ministry for Children and Families, undated).

developmental disability.²⁵ Aboriginal communities are excluded because of federal government for on reserve programs. According to the provincial policy, professionally trained consultants visit families at home to help parents and to encourage parents support their child's development.²⁶ These services are delivered by nonprofit societies on a contract basis with local Infant Development Advisory Committees overseeing programs and providing direction and support.²⁷

Respite Services are designed for families of children with special needs who are not receiving either Nursing Support Services or At Home Respite Benefits support. Again, the criteria of eligibility include mental disability, autism or eligibility for At Home Program or At Home Program Respite Benefits.²⁸ A referral from a Ministry of Children or Family Development social worker or other professional is necessary, and there is an income-testing component to qualifying for this assistance.²⁹

The Child and Youth Care Worker Services Program provides families with specialized child care workers to assist the child in learning social or life skills or to assist with child management skills. A professional (including a psychologist, social worker, or doctor) needs to assess the child as having a mental disability, autism or as being eligible under the At Home / At Home Respite Benefits Program.³⁰ Contractors deliver this service either on a short term, ongoing or intermittent basis.³¹

²⁵ Government of British Columbia, *Inventory of Existing Special Needs Programs* (Victoria: Ministry of Children and Family Development, undated).

²⁶ Government of British Columbia. *Community Support Services Policy Manual: Services for Children with Special Needs*. (Victoria: Ministry of Social Services, 1996), p. 3.1-2.

²⁷ Government of British Columbia, *Inventory of Existing Special Needs Programs* (Victoria: Ministry of Children and Family Development, undated) and Government of British Columbia. *Community Support Services Policy Manual: Services for Children with Special Needs* (Victoria: Ministry of Social Services, updated 1996), p. 3.2.2-1. See also *Infant Development Program Policy and Procedures Manual* (date unknown), The Office of the Provincial Advisor.

²⁸ Government of British Columbia, *Inventory of Existing Special Needs Programs* (Victoria: Ministry of Children and Family Development, undated).

²⁹ Government of British Columbia. *Community Support Services Policy Manual* (Victoria: Ministry of Social Services, updated 1996), pp. 3.2.4-1 & 3.2.5-1.

³⁰ Government of British Columbia. *Community Support Services Policy Manual* (Victoria: Ministry of Social Services, updated 1996), p. 3.2.6-1.

³¹ Government of British Columbia, *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

Behavioural Support for Children with Autism Program is a program comprising At Home Respite Benefits, Child and Youth Care Worker Services, Homemaker / Home Support Services, Supported Daycare and the Infant Development Program to provide support by trained professionals to children with autism and their families. Eligibility is based on a diagnosis of autism or evidence of autistic-like tendencies.³² Contractors deliver these services.

The Homemaker / Home Support Worker Program provides for household management or child care for families of children with special needs. Families with children with mental disabilities, autism or eligibility under the At Home / At Home Respite Benefits Program are eligible.³³ Homemakers assume full or partial responsibility for child care and / or household management. Home support workers provide basic care for children and families. In addition, they might teach basic child care skills and / or home management. "Priority agencies" of the health ministry or individuals contract to deliver this program.³⁴

Parent Support for Families with Children with Special Needs is also administered on a contractual basis. Eligibility is based on mental disability, autism or eligibility under the At Home / At Home Respite Benefits Program. Services include parent skill-training, parent support groups and counseling, life skills, pre and post-natal counseling and other organized activities.³⁵ This program provides a range of community based services including parent support groups, parent skills training, counseling life skills and organized activities.³⁶

³² Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.8-1. There is a *Screening Protocol for Autism* that provides guidance to professionals in this regard.

³³ Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.7-1.

³⁴ Government of British Columbia, *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

³⁵ Government of British Columbia. *Community Support Services Policy Manual*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.9-1.

³⁶ Government of British Columbia, *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

The Professional Support for Children with Special Needs Program is intended to provide professional assistances to families, service providers or ministry staff to assess child and development intervention plans. Eligibility is based on a child with a mental disability, autism or eligibility under the At Home / At Home Respite Benefits Program. The services may include assessments, training, counseling, public awareness and agency liaison.³⁷ Community service providers provide this service on a contractual basis.

The Associate Family Program matches trained care-giving families with a child with multiple disabilities and complex needs, if the natural parent/s are unable to continue to care for this child. The disabilities must include severe physical disabilities, and the child must currently be in either an extended care facility or frequent respite care. Service delivery varies by region.³⁸

The Early Intervention Program provides for community-based physiotherapy, occupational therapy, speech language pathology and family support workers for pre-school children at risk of developmental delays. Eligibility includes the following: condition or disease that could lead to a secondary disabling condition; signs of developmental delay; or disabling conditions from accidents. The Ministry of Children and Family Development delivers contracts to local service agencies to deliver services.³⁹

School-aged Therapy Services provides for school based occupational therapy and physiotherapy to school-aged children and adolescents with special needs. This service relates to provincial educational special needs policy and services. The criteria for accessing this service is risk for developmental delay or demonstrated needs. Agencies who deliver this service receive joint funding from the Ministry of Children and Family Development and school districts.

³⁷ Government of British Columbia. *Community Support Services Policy Manual: Services for Children with Special Needs*, (Victoria: Ministry of Social Services, updated 1996), p. 3.2.10-1.

³⁸ Government of British Columbia, *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

³⁹ Government of British Columbia, *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

Summer Programs for the Deaf / Blind are designed so that deaf and blind students might maintain skills learned during the school year. Children and adolescents five years and older who are deaf and blind are eligible. Regions are responsible for managing and contracting with agencies to deliver these services.⁴⁰

The Community Brain Injury Program for Children and Youth in British Columbia is a support program for brain injured children and adolescents. To be eligible, the child or adolescent must have a primary diagnosis of Acquired Brain Injury. In addition, the referral to the program should not be more than a year post injury. Contractors provide the services.⁴¹

Policy attaches to contracted programs. In parts of the province where such contracted services do not exist, there is a corresponding absence of applicable policy. Despite the *Child, Family and Community Services Act's* stated emphasis on "best interests of the child," the policy-heavy emphasis of many of these specific child and family related services could lead to inconsistent and unequal policy and programming throughout different regions of the province for children and adolescents with special needs. In other words, "best interests of the child" with special needs in one part of the province could look very unlike another part of the province's "best interests of the child" with special needs⁴² depending on the availability of local services.

The *Child Care BC Act*⁴³ establishes the legal framework for the care and supervision of other people's children in designated child care facilities. In addition, this Act establishes the legal basis for the British Columbian government's provision of supported child care consistent with the policy direction set out in the Federal / Provincial / Territorial National Child Benefit agreement.⁴⁴ Section 12 of the *Child Care BC Act* provides that the government may make regulations "respecting the

⁴⁰ Government of British Columbia. *Inventory of Existing Special Needs Programs*, (Victoria: Ministry of Children and Family Development, undated).

⁴¹ See also Government of British Columbia. *Guidelines for Planning Brain Injury Services and Supports in British Columbia*, (Victoria: Ministry of Health Services and Ministry of Health Planning, 2002).

⁴² Further research is required into this issue.

⁴³ S.B.C. 2001, c. 4.

⁴⁴ Part of the *National Children's Agenda* which I will discuss in further detail in relation to the federal government.

provision, in child care settings, of services to children with special needs;⁴⁵ however, no such regulations exist under this Act. The Act does not define the term “special needs.” The name of the special needs program pursuant to this Act is Supported Child Care, and the *Practice Guidelines and Procedures for Supported Child Care*⁴⁶ set out operational policy for this program. This program is based on the idea of “inclusive child care” whereby children with special needs receive support to attend regular day care programs.⁴⁷ The policy establishes that to be eligible for this program, a child must have a physical, intellectual, emotional, communicative or behavioural impairment and require additional support due to that impairment.⁴⁸ The Guidelines state that the documentation to support evidence of this impairment can include: a letter or report from a medical doctor, infant development consultant, speech language pathologist, physical or occupational therapist, psychologist, nurse or other related professional.

In addition to these services specifically designed for children and adolescents with special needs, other service delivery areas of Ministry of Children and Family Development also potentially impact on this group of children and adolescents. These specific areas of concern include: mental health; child apprehensions; foster care; guardianship; and adoptions. Therefore, the related legislative, regulatory and policy provisions related to those subjects to children and adolescents with special needs are also relevant.

Child protection and guardianship

The *Child, Family and Community Service Act* establishes the legal authority and framework for child protection in the province. Part 3 of the Act is subtitled “Child Protection.” Parts of section 13 of the Act could have particular impact for children and adolescents with special needs.

⁴⁵ S.B.C. 2001, c. 4, s. 12(2)(f).

⁴⁶ Government of British Columbia. *Practice Guidelines and Procedures for Supported Child Care*, (Victoria: Ministry for Children and Families, 1999).

⁴⁷ Government of British Columbia. *Every Child Belongs: Supported Child Care in British Columbia*, (pamphlet). (Victoria: Ministry for Children and Families, 2000).

⁴⁸ Government of British Columbia. *Practice Guidelines and Procedures for Supported Child Care*, (Victoria: Ministry for Children and Families, 1999), pp. 12-13. For more information about this program, see the British Columbia Ministry for Children and Families website, *Supported Child Care*, at http://www.mcf.gov.bc.ca/supported_childcare/supported_childcare.htm, accessed 4/04/02.

According to this section, a child needs protection if: the child is deprived of necessary health care;⁴⁹ 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;⁵⁰ and the child's parent is *unable* or unwilling to care for the child and has not made adequate provision for the child's care.⁵¹ The Act also provides for child protection in cases where the child or adolescent develops physical or emotional special needs as a result of the parent's conduct.⁵²

The potential result of this provision for special needs children and adolescents is that their families might in some instances be more susceptible to protection intervention due to the additional challenges posed by the special needs. In addition, the wording of this provision leaves allows for the possibility that families living in rural or isolated areas, where services are not available, could be more vulnerable to protection measures. Much of what occurs in practice is subject to the discretion of the local Ministry of Children and Family Development personnel. With the current closure of courthouses throughout rural areas of British Columbia, families, children and adolescents with special needs are that much more susceptible to protection measures when adequate support and health services are unavailable locally.

The *Practice Standards for Child Protection* provides policy-based guidance to child protection social workers in British Columbia. Practice Standard 10 establishes the criteria for whether or not to investigate a child's need for protection. The general criteria leaves a certain amount of discretion to the social worker to assess the child's safety and well-being, the child's need for protection, and the ability and willingness of a child's parent to care for an protect the child. When considered in the context of children and adolescents with special needs who may pose particularly demanding challenges for their parents, this Practice Standard has interesting potential

⁴⁹ R.S.B.C. 1996, c. 46, s. 13(1)(f).

⁵⁰ R.S.B.C. 1996, c. 46, s. 13 (1)(g).

⁵¹ R.S.B.C. 1996, c. 46, s. 13(1)(h). I have italicized the word "unable" because of the serious potential implications of this word. On the surface, this section allows for protection proceedings to occur when parents are unable to access services for their child's physical care and control due to unavailability in the area where they reside and in situations where they cannot afford to provide for the child's physical care and control. Section 1 of the Act defines "care" as physical care and control of the child.

⁵² R.S.B.C. 1996, c. 46, section 13(a), (b), (c), (d), (e) and (k).

implications. Families of children and adolescents with special needs could be more vulnerable to a protection investigation occurring due to the wording of these standards. The special needs of children or adolescents create additional challenges for families. There is no particular reference to the social worker needing to consider whether or not support services are available to the family in a given community in their decision of whether or not to commence a protection investigation.

Even if a social worker decides *not* to conduct a protection investigation, a possible outcome under Practice Standard 10 is voluntary family service. This outcome can occur if the social worker deems that the family requires services *from the community*.⁵³ According to the Act, these voluntary services⁵⁴ are arranged by way of an agreement between the Ministry and the family; however, there is no obligation on the part of the Ministry to enter into such an agreement or to provide any of these services to the family.⁵⁵ Ministry personnel hold a great deal of discretion in this regard. Section 7 provides the Ministry with the discretion to enter into written agreements with a parent of a child with special needs.⁵⁶ Under such an agreement is a clause providing that the parent of such a child can give as much guardianship as necessary to the Ministry to bring the agreement into effect.⁵⁷

The level of risk to the child will determine what protection measure the Ministry of Children and Family Development social workers take. The guiding principles are that the measures both adequately ensure the child's protection and are the least disruptive possible.⁵⁸ The continuum of protection options from least to most intrusive is as follows: protective services within the home;

⁵³ This policy direction remains silent if the services are not available within the community.

⁵⁴ Section 5 of the Act, R.S.B.C. 1996, c. 46, include but are not limited to: services for children and youth; counseling; in-home support; respite care; parenting programs; and services to support children who witness family violence.

⁵⁵ R.S.B.C. 1996, c. 46, s. 5(1).

⁵⁶ R.S.B.C. 1996, c. 46, s. 7. "Special needs" is not defined in the legislation.

⁵⁷ R.S.B.C. 1996, c. 46, s. 7. This guardianship provision is not included in voluntary agreements for children without special needs.

⁵⁸ Government of British Columbia, *Practice Standards for Child Protection*, (Victoria: Ministry of Children and Family Development, undated), p. 42.

protective intervention order; order for necessary health care; child stays with extended family or community; voluntary care agreement; supervision order; and removal.⁵⁹

If there are ongoing protection concerns as well as protective support services and support services available for the child to remain at home, the Ministry of Children and Family Development classifies the case as a protective family service file. If a child does remain in the home under these terms, and if there are protection concerns or if the matter is a protective family service file, ongoing responsibilities continue under the protection social workers of the Ministry of Children and Family Development. These ongoing responsibilities include: seeing the child and family; facilitating the service plan (that is, ensuring a coordinated approach to the service plan); investigating reports about the family; gathering information from service providers and others to keep fully informed about the level of risk to the child; monitoring and recording whether the risk reduction plan is being implemented by the family, whether services are utilized and whether the services in place are sufficient to protect the child; re-assessing risk and revising the service plan as necessary; and taking measures to protect the child.

A supervision order is an order the Ministry of Children and Family Development obtains over the child from court while the child remains in the home. Practice standard 26 states that the usual conditions of these orders include: the social worker is able to have direct and private access to the child and child's home, and the child is to be removed from the home if access is denied according to the terms of the supervision order. The social worker must explain to the court what terms and conditions will result in the child being removed.

The most severe protection measure provided for under the *Child, Family and Community Service Act* and associated regulatory and policy direction is removing a child from the home. Section 30 of the Act establishes that a child can be removed if the director (or delegated social worker) considers that the child's health or safety is in immediate danger or less disruptive measures are

⁵⁹ Government of British Columbia, *Practice Standards for Child Protection*, (Victoria: Ministry of Children and Family Development, undated).

not sufficient to protect the child.⁶⁰ In relation to supervision orders, Practice Standard 27 states that removals without a court order can take place if: the social worker believes an existing supervision order no longer protects a child; or a person breaches a term or condition of a supervision order.

There are specific provisions in these practice standards pertaining to lost or runaway children (that is, individuals under nineteen years of age). A Ministry of Children and Family Development protection worker can take charge of a lost or runaway child who has been away for not more than seventy-two hours if the child needs daily care, a medical examination or necessary health care. Provision also exists for the child protection worker to assist in returning the child home if the child agrees and other conditions are met. If the child who has run away is a youth (that is, an individual 16 to 18 years of age) and there are no protection concerns, the worker can choose to either advise the child's parent and take no further action, or offer the parent/s and youth other services to assist with reunifying them.⁶¹

Yet another option for some adolescents is to enter into an agreement on their own behalf with the Ministry of Children and Family Development. Section 12.2 of the *Child, Family and Community Services Act* provides that if a youth cannot be reunited with the family, the Ministry may enter an agreement with him or her. Such an agreement can provide for residential, educational and other support services in addition to financial assistance. For the purpose of such agreements, the definition of "youths" is expanded to include someone under sixteen years old who is married *and* is either a parent or an expecting parent. Youths entering into these agreements may be eligible for Ministry of Human Resources training and job search programs.⁶²

⁶⁰ Government of British Columbia, *Practice Standards for Child Protection*, (Victoria: Ministry of Children and Family Development, undated), p. 45.

⁶¹ Government of British Columbia, *Practice Standards for Child Protection*, (Victoria: Ministry for Children and Families, undated), p. 34, citing "Policy, VOL II: 3.14."

⁶² Government of British Columbia, *Fast Track: A Guide to the Ministry of Human Resources, Ministry of Human Resources*, (Victoria, Ministry of Human Resources, 2001), available at <http://www.mhr.gov.bc.ca/PUBLICAT/ft/index.htm>.

The wording of the *Child, Family and Community Service Act* creates unique issues for Aboriginal children. An “aboriginal child” is a registered Indian, the child of a registered Indian or a Nisga’a child.⁶³ Generally, the Act provides that in cases involving this group of children, their cultural identity *must* be considered as an aspect of their best interests.⁶⁴

Although the child protection provisions of the *Child, Family and Community Service Act* and associated regulations do not explicitly address or apply to special needs children and adolescents, it is not unrealistic that a child protection case involving a child or adolescent with special needs will occur. When a child protection investigation transpires, the child protection system is likely to be only one among several systems which the child or adolescent with special needs will simultaneously experience. This child protection context is therefore relevant to a holistic examination of legislative and policy context impacting on children and adolescents with special needs.

Guardianship is another related and significant role played by the Ministry of Children and Family Development and potentially impacting on children and adolescents with special needs. Guardianship by the Ministry means having care and control of the *person* of the child in care.⁶⁵ Various provisions in the *Child, Family and Community Service Act* establish the authority for the Ministry’s guardianship role. Section 6 of the Act provides for voluntary care agreements under which the parent voluntarily gives care of the child to the Ministry. The parent provides as much authority as guardian as is necessary to give effect to the agreement.

Section 7 of the Act specifically relates to children (less than nineteen years old) with special needs. Interestingly, the legislation provides no definition of what the term special needs means in this context so it is left relatively open to interpretation; however, the important aspect of this

⁶³ R.S.B.C. 1996, c. 46, s. 1.

⁶⁴ R.S.B.C. 1996, c. 46, s. 4.

⁶⁵ For the child’s financial and legal affairs, the British Columbia public guardian and trustee may play a role. Please consult a lawyer. For further information about the public guardian and trustee, see the *Public Guardian and Trustee Act*, R.S.B.C. 1996, c. 383 and *Public Guardian and Trustee Regulation*, B.C. Reg. 457/99.

legislative provision is that it too provides that the Ministry can enter into an agreement with a parent who has custody over a child with special needs. Under such an arrangement, the parent gives as much parental authority over to the Ministry as is required to give effect to the agreement. Under this provision, the initial term of the agreement is six months and it can be renewed for up to twelve months. Nothing in these kinds of agreements in any way limits the jurisdiction of the courts to make orders about the child.⁶⁶

If the Ministry becomes the guardian of a child, a comprehensive plan of care must be put into place. Practice Standards 31 to 41 of *Practice Standards for Guardianship* address what this plan of care must include. These guardianship measures have implications for children and adolescents with special needs in the care of the Ministry of Children and Family Development, whether by way of protection procedures or voluntary arrangements. Practice Standard 31 outlines the terms relating to the provision of timely and regular health care.

Practice Standard 32 stipulates that if a child in care is terminally ill or suffers a life threatening medical condition, his or her safety and well-being is to be a paramount consideration for the Ministry staff. Section 17 of the *Infants Act*⁶⁷ also applies in the provision of health care to a child in care of the Ministry of Children and Family Development. I describe this legislative provision in more detail in the "Health" section (provincial government) on pages 36 and 37 of this report.

A limitation on section 17 of the *Infants Act*, whether or not the child is in care, is when two medical practitioners have the opinion that the health care is necessary to preserve the child's life or to prevent serious or permanent impairment of the child's health. If the child in care refuses to consent to the health care, the Ministry of Children and Family Development may apply to court for an order. Even if a child is not in care and a parent refuses to give consent under these circumstances, the Ministry has the authority pursuant to this section to proceed to court for an order that the health care proceed. In either case, the court must be satisfied that the health care

⁶⁶ R.S.B.C. 1996, c. 46, s. 12.

⁶⁷ R.S.B.C. 1996, c. 223.

is necessary to preserve the child's life or to prevent serious or permanent impairment of his or her health. It is important to note that regardless of the court order, the medical practitioner retains the legal right to refuse to proceed with the medical procedure should the child and / or parent continue to refuse consent.⁶⁸

If there are questions about the ability of the child in care to consent to health care, the policy sets out an active role for Ministry of Children and Family Development workers to become involved in the medical capability assessment. Their involvement is to provide input and to ensure that medical professionals consider such factors as the child's religious and cultural heritage. In addition, the Ministry personnel are expected to play a role of advocate on behalf of the child in terms of ensuring two physicians are involved. The risks and benefits of treatment are explained by physicians, physicians who have determined the best interests of the child. In the case that a child does not cooperate, the Ministry personnel are supposed to request that the matter be referred to a health care ethics committee for review.⁶⁹ Therefore, for a child or adolescent with special needs who is both in care and receiving health care, the *Child, Family and Community Service Act* and associated policy establish some mandated principles for protecting his or her rights, particularly on the issue of consent.

Practice Standard 33 of the guardianship standards provides that the Ministry must promote the child's education and participation in social and recreational activities. In the case of a child with special learning needs, the standard imposes the obligation on a guardianship worker to ensure the school has an individualized educational plan in place. In addition, the guardianship worker is to arrange for the child to receive any remedial or tutorial services that would help that child reach his or her school potential. Practice Standard 36 outlines that the comprehensive plan of care needs to contain provisions relating to the child's social presentation. The plan must provide for assistance for the child with interacting positively with others and presenting appropriately in

⁶⁸ Government of British Columbia, *Practice Standards for Guardianship*, (Victoria: Ministry for Children and Families, 2001), p. 64.

⁶⁹ Government of British Columbia. *Practice Standards for Guardianship*, (Victoria: Ministry for Children and Families, 2001), p. 63.

different situations such as work, school and various social settings. According to Practice Standard 37, the guardianship worker is to ensure the child receives effective treatment and support for continuing emotional and behavioral problems.

*Standards for Foster Homes*⁷⁰ describe the expected level of service for children and adolescents in foster homes. Section 70 of the *Child, Family and Community Service Act* lists the rights that children in care have. These children and adolescents have the following rights:

- To be fed, clothed and nurtured according to community standards;
- To be informed about their plan of care;
- To be consulted and express their views to their ability about significant decisions affecting them;
- To reasonable privacy and possession of their personal belongings;
- To be free of corporal punishment;
- To be informed of the standard of care the caregiver requires and the consequences of not complying;
- To receive necessary medical and dental care;
- To participate in available social and recreational activities to their ability;
- To receive religious instruction and participate in religious activities they choose;
- To receive guidance and encouragement to maintain their cultural heritage;
- To have available an interpreter if language or disability prevents their full participation in decisions affecting their custody and care;
- To privacy in discussions with members of their families subject to court order to the contrary;
- To privacy when discussing with a lawyer, the Child, Youth and Family Advocate, the Ombudsman, or elected government representative;
- To be informed about and to be assisted in contacting the Child, Youth and Family Advocate;

⁷⁰ Government of British Columbia, (Victoria: Ministry for Children and Families, 1998).

➤ To be informed of their rights under the act and the procedures to enforce their rights.
The policy standards within foster homes revolve around these rights.

The *Standards for Staffed Children's Residential Services*⁷¹ apply to staffed residential facilities for children and adolescents, and to foster homes with more than one employee. These standards are generally consistent with, and reflective of, the provisions of the *Child, Family and Community Service Act*⁷² including section 70 discussed in the preceding paragraph.

What appears to be lacking from this elaborate legislative and policy scheme of caring for and supporting children is a comparable level of support and centrality of rights for a child or adolescent (with or without special needs) who remains in the care and custody of her or his own biological family. Unless a parent of the child or adolescent loses or relinquishes custody to the Ministry, whether through child protection measures or a guardianship agreement, the legislation and policy does not specifically provide for such deliberate support or advocacy for the child's family in terms of the child's entitlements to accessing services to the same extent. The wording of section 5 of the Act, subtitled "support services to families" potentially allows for such a role, but the Ministry has not announced any broad provincial policy or practice to this effect. This gap in the law has serious potential implications for a child or adolescent with special needs at whose home the family may lack information about services, or the ability or authority to obtain them.

Another development related to the functions of the British Columbia Ministry of Children and Family Development is the creation of *Aboriginal Operational and Practice Standards and Indicators*.⁷³ This document's stated purpose is to guide the Ministry and Aboriginal communities in the negotiation of Delegation Enabling Agreements pursuant to the *Child, Family and*

⁷¹ Government of British Columbia, (Victoria: Ministry for Children and Families, undated, http://www.mcf.gov.bc.ca/child_protection/standards_residential/services_4.htm, accessed on 3/02/02.

⁷² R.S.B.C. 1996, c. 46.

⁷³ Government of British Columbia, (Victoria: Ministry for Children and Families, 1999).

Community Service Act.⁷⁴ Standards included at Level 12 are operational and closely follow the provisions of the Act.

Adoption

The purpose of the *Adoption Act*⁷⁵ is “to provide for new and permanent family ties through adoption, giving paramount consideration in every respect to the child’s best interests.”⁷⁶

Under this Act, a child is defined as any unmarried person under nineteen years old.⁷⁷

This Act has potential implications for both children and adolescents with special needs who may be put up for adoption. As I will discuss, a separate definition of “aboriginal child” creates possible implications for an Aboriginal child or adolescent who may be having problems due to cultural or linguistic factors.⁷⁸ The accompanying regulation to this Act is the *Adoption Regulation*.⁷⁹

The responsibility for administering the *Adoption Act* and regulation currently rests with the Adoptions Branch of the British Columbia Ministry of Children and Family Development. The *Practice Standards and Guidelines for Adoption* relate specifically to adoption.⁸⁰ The adoptions branch developed these standards. They cover adoption procedures for children and youth in care, birth parents, prospective parents, adoptive parents and adopted adults.

In all adoption cases, Practice Standard 1 sets out that the child’s best interests are the paramount consideration. Factors included in the assessment of best interests include the following: the child’s safety; the child’s physical and emotional needs and level of development; and the child’s cultural, racial, linguistic and religious heritage. The preferred practice is that two separate adoption workers work for the child and prospective parent/s. Practice Standard 2 requires that

⁷⁴ R.S.B.C. 1996, c. 46.

⁷⁵ R.S.B.C. 1996, c. 5.

⁷⁶ R.S.B.C. 1996, c. 5, s. 2.

⁷⁷ R.S.B.C. 1996, c. 5, s. 1.

⁷⁸ See definition of “children and adolescents with special needs” near the beginning of this report.

⁷⁹ B.C. Reg. 291/96.

⁸⁰ Government of British Columbia, (Victoria: Adoptions Branch, Ministry of Children and Family Development, 2001).

adoption workers seek the child's views on an ongoing basis during the adoption process *to his/her capabilities*. There are no special procedures for children or adolescents with special needs in this regard; however, if the child is unable to communicate due to communication difficulties, cultural differences or other reasons, the consultation can take place with a person who knows the child well and who can interpret for the child. A child of twelve years or over should be informed about the right to consent (or not) to the adoption.⁸¹

There are specific provisions in the Standards and Guidelines relating to Aboriginal children. Section 1 of the *Adoption Act* defines "aboriginal child" as someone unmarried and under nineteen years old, registered under the *Indian Act* or whose birth parent is registered under the *Indian Act*, is Nisga'a or who is under twelve years old and has a biological parent of Aboriginal ancestry. An adolescent twelve years or over (under nineteen) is also considered to be an Aboriginal child if that adolescent is of Aboriginal ancestry and considers him or herself to be so. Practice Standard 18 relates to planning for the adoption of an Aboriginal child in continuing custody. For these children, before an adoption occurs, the child needs to be consulted and provided with information about the value of involving her or his birth parent's Band or Aboriginal community in addition to being given information about available Aboriginal support services. In addition, prior to the adoption, the child should be registered at an early stage under the *Indian Act* and registered with any Band if eligible for membership. Unless the child for adoption is twelve years or older and objects, the designated representative of the Aboriginal community or Band should be involved in identifying potential prospective parents.

Child advocacy

The functions of the British Columbia Child, Youth and Family Advocate are set out in section 2 of the *Child, Youth and Family Advocacy Act*.⁸² They include the following:

⁸¹ An interesting point is that section 13 of the *Adoption Act* establishes that in all cases, a child over twelve years old must consent to the adoption. There is no provision explicitly addressing the situation of an adolescent who is incapable of consenting due to mental or extreme physical challenges.

⁸² R.S.B.C. 1996, c. 47.

- Ensuring the rights and interests of children, youths and their families relating to *designated*⁸³ services are protected and advanced and their views are heard and considered;
- Ensuring children, youths and their families have access to fair, responsive and appropriate complaint and review processes in the provision of designated services;
- Providing information and advice to government and communities about availability, effectiveness, responsiveness and relevance of designated services to children, youths and their families;
- Promoting and coordinating in communities the establishment of advocacy services for children, youths and their families;
- Performing any other functions assigned to the advocate by enactment.

The office of the Child, Youth and Family Advocate is located in Vancouver, a great distance from many of the rural, isolated communities of the province. An interesting provision in the legislation is the advocate's power to delegate to any person, agency or community organization any duties, powers or functions of the advocate.⁸⁴ Section 5 stipulates that the advocate is not to act as legal counsel. The advocate has a number of powers under the enabling Act including: investigating; initiating and participating in case conferences, administrative reviews, mediations and other processes about provision of designated services; meeting with and interviewing children and their families; informing the public about children's needs and rights; and making recommendations about legislation, policy and practice; and making agreements to ensure child advocacy.⁸⁵ In addition, for the purpose of carrying out the powers set out in the Act, the advocate can enter facilities wherein services are provided to children and youths.

⁸³ R.S.B.C. 1996, c. 47, section 1 sets out that "designated services" are services and programs authorized, provided or funded under a designated Act and provided by a prescribed Ministry.

⁸⁴ R.S.B.C. 1996, c. 47, s. 6. The author is unaware of how common a practice it is for the Advocate to delegate duties.

⁸⁵ R.S.B.C. 1996, c. 47, s. 4.

Another related public body that currently exists in British Columbia is the Children's Commission.⁸⁶ For the purpose of the *Children's Commission Act*,⁸⁷ a child is anyone under nineteen years old. Some of the powers of the Commission as they relate to children and adolescents with special needs who have involvement with the Ministry of Children and Family Development⁸⁸ are as follows:

- Collecting information about critical injuries sustained by children while receiving designated services;
- Making recommendations concerning such critical injuries;
- Setting standards to be followed by prescribed ministries or government agencies;
- Monitoring the extent to which the ministries and agencies are following any prescribed standards;
- Reviewing and resolving complaints by a child, the child's parent, the Advocate or other person representing the child about the child's rights being breached while in care or decisions concerning the provision of designated services;⁸⁹
- Monitoring and auditing plans of care for children in continuing care of the government; and
- Providing public education aimed at increasing understanding of the Commission's role.⁹⁰

Collectively, the role of these two offices is to ensure a certain amount of accountability on the part of the provincial ministries that provide services to children and youths in British Columbia. To

⁸⁶ As of April 2002, the Children's Commission and Child, Youth and Family Advocate are still operating; however, significant changes with British Columbia government are currently underway in this regard.

⁸⁷ S.B.C. 1997, c. 11.

⁸⁸ Sections 2 and 3 of the *Children's Commission Regulation*, B.C. Reg. 250/97, establish that the Ministry of Children and Family Development and the services they provide are designated for the purpose of the *Children's Commission Act*. A related issue is the means by which other provincial ministries providing services to children and adolescents are held accountable.

⁸⁹ In this regard, the functions of the Children's Commission closely relate to those of the Child, Youth and Family Advocate. The reference to the Advocate in this provision envisions that the Advocate might become involved at the first stage of an investigation as a representative of the child's interests whereas the children's commission might do the investigation. However, as I have noted, the Advocate is not the child's legal counsel so the role of the Advocate is somewhat ambiguous in this regard.

⁹⁰ S.B.C. 1997, c. 11, section 4 sets out the Commission's jurisdiction.

what extent these bodies are effective throughout various regions of the province, particularly rural and isolated areas, has not been canvassed in this report. Because neither of these public bodies provides a legal counsel role to children and youths, a related issue is the extent to which children and youths are able to access legal aid and accountability measures on their own where necessary. The only provision in the *Child, Family and Community Service Act* relating to independent counsel is in section 60, in relation to consent supervision or custody orders. Under this section, if a child over twelve years old consents to such an arrangement, the Ministry is supposed to advise the young person to consult with independent legal counsel before the order is granted by the court. In addition, a judge may make a child party to a protection hearing, in which case that child should be entitled to speak to a lawyer.⁹¹ Otherwise, there is no specific legislative provision that provides a child or youth with the right to access counsel for non-criminal matters. Regardless of subject area, direct and substantive accountability to children and adolescents by service providers is an issue, the significance of which should not be under-estimated by researchers or practitioners when considering legislation, policy and services for children and adolescents with special needs. Public bodies focusing on accountability perform a vital role.

BC Benefits (social assistance)

A number of Acts establish social assistance programs in British Columbia. This area of law and policy has a number of potentially complex implications for children and adolescents with special needs, specifically if they are of low-income and socially assisted families. The British Columbia currently has responsibility for administering these Acts. A point worthy of note is that these Acts and regulations are highly discretionary in nature, meaning that very few *obligations* exist with the Ministry of Human Resources to act. Delegated staff members are thus potential able to not act. This report does not examine which employees of the Ministry of Human Resources are delegated to exercise this discretion over service users' lives, nor do I discuss the ramifications of the current British Columbia government's changes to the provincial social assistance programs under the *New Era* approach.

⁹¹ For further information, see Government of British Columbia, *When You Need a Lawyer: Information for Children and Youth on Independent Legal Advice* (pamphlet), (Victoria: Ministry for Children and Families, 1998).

The *BC Benefits (Child Care Subsidy) Act*⁹² establishes the legal authority for child care subsidies to some families subject to the regulation. Section 4 of the Act establishes that the minister (that is, ministry delegates) *may* pay child care subsidies. In other words, very few specifics or obligations on the government to provide these subsidies exist at the legislative level. Eligible child care includes care or supervision by a person other than the parent in either a facility licensed under the *Community Care Facility Act*⁹³ or the child's home. According to *Fast Track: A Guide to the Ministry of Human Resources*,⁹⁴ this subsidy is to be paid directly to the child care provider.

The accompanying regulation is the *BC Benefits (Child Care) Regulation*.⁹⁵ Here, "child with special needs" is defined as a child (under nineteen years old) with physical, intellectual, emotional, communicative or behavioral impairment who *in the minister's opinion*⁹⁶ requires additional support because of that impairment.⁹⁷ According to the regulation, parents of special needs children will receive child care subsidies either if Ministry of Human Resources designated employees deem them necessary or if the Ministry of Children and Family Development arranges or recommends it.⁹⁸ There are limitations regarding the reasons for the Ministry of Human Resources to pay the subsidy;⁹⁹ however, these limitations do not apply for a "child with special needs" as defined in the regulation. The resulting implication is that parents of children and adolescents with a special need, as defined in the regulation, should be entitled to more liberal access to child care subsidies *BUT* at the discretion of the Ministry of Human Resources and pursuant to that ministry's policy and procedure.

⁹² R.S.B.C. 1996, c. 26.

⁹³ R.S.B.C. 1996, c. 60. See also *Community Care Facility Act* (Supplement), R.S.B.C. 1996, c. 60 and *Child Care Licensing Regulation*, B.C. Reg. 319/89.

⁹⁴ Government of British Columbia. (Victoria: Ministry of Human Resources, 2001), p. 65.

⁹⁵ B.C. Reg. 74/97.

⁹⁶ Any reference to the "minister" in the legislation or regulations refers to the delegated personnel of the government department with responsibility for administration. Currently in this case, the "minister" means employees of the British Columbia Ministry of Human Resources.

⁹⁷ B.C. Reg. 74/97, s. 1.

⁹⁸ B.C. Reg. 74/97, s. 3. This section refers to the *Child, Family and Community Service Act*; however, the Ministry of Children and Family Development currently has responsibility for administering that Act.

⁹⁹ B.C. Reg. 74/97, s. 3(2).

In the Ministry of Human Resource's *Fast Track: A Guide to the Ministry of Human Resources*,¹⁰⁰ child care subsidy is simply described as a subsidy to help low and moderate income families meet their child care needs. In relation to the child care subsidies, there is no particular mention of children with special needs in this document.¹⁰¹ In addition, I did not find any reference to special needs in the ministry's website description of the program¹⁰² or in a public pamphlet entitled *Child Care Subsidy and Rates*.¹⁰³ In other words, although the legislation speaks directly to an exception to limitations on child care subsidies for children with special needs, this publicly available documentation neither reflects nor acknowledges it. The potential implication *could be* that in certain instances, low-income families of children with special needs miss-out on subsidies to which they in some instances are legally entitled, and this would be subject to ministry workers' decisions.¹⁰⁴

The *BC Benefits (Income Assistance) Act*¹⁰⁵ peripherally relates to children and adolescents with special needs. According to this Act and the associated *Income Assistance Regulation*,¹⁰⁶ a "child" is not usually eligible for income or financial assistance in their own right.¹⁰⁷ The regulation defines "child" as an unmarried person under nineteen years old.¹⁰⁸ A child living independently from his or her parent may be eligible, provided the minister (i.e. designated Ministry of Human Resources staff) makes reasonable efforts to get the parent to provide for the child AND the minister decides to grant this assistance.¹⁰⁹ In other words, the provision gives a lot of discretion to

¹⁰⁰ Government of British Columbia, *Fast Track: A Guide to the Ministry of Human Resources* (Victoria: Ministry of Human Resources, 2001).

¹⁰¹ Government of British Columbia, *Fast Track: A Guide to the Ministry of Human Resources* (Victoria: Ministry of Human Resources, 2001), pp. 5 & 65.

¹⁰² <http://www.mhr.gov.bc.ca/PUBLICAT/CC/CCSubsidy.htm>, accessed 4/18/02.

¹⁰³ Government of British Columbia (Victoria: Ministry of Social Development and Economic Security, 2000).

¹⁰⁴ See <http://www.mhr.gov.bc.ca/PUBLICAT/ft/bcea14.htm>, accessed 4/18/02. Again, this report does not include an enquiry into practice and procedures although I think that would be a useful and informative research endeavour.

¹⁰⁵ R.S.B.C. 1996, c. 27.

¹⁰⁶ B.C. Reg. 75/97.

¹⁰⁷ R.S.B.C. 1996, c. 27, s. 1 & B.C. Reg. 75/97, ss. 4 & 5.

¹⁰⁸ B.C. Reg. 75/97.

¹⁰⁹ B.C. Reg. 75/97, s. 5.

the Ministry's designated personnel. If a "child" lives independently, is employable and receives income assistance, he or she (or his or her spouse) is also eligible for employment-related programs.¹¹⁰

At this point, it is also necessary to look at whether or not a person under nineteen (regardless of marital status) is disabled. If a married or unmarried person under nineteen years receives a disability allowance, he or she is also eligible to access these employment-related programs. Alternatively, the spouse of a person under nineteen receiving a disability allowance is eligible to access employment-related programs.

Independent of whether or not a person under nineteen years of age receives a disability allowance, if he or she has a level one disability, this person¹¹¹ or his or her dependant¹¹² is eligible to access employment-related programs.¹¹³ A "person with a level one disability" is someone who: has a medical condition certified to by a medical practitioner, which lasts for at least six months; has resulting ongoing extra costs or needs to perform daily living tasks; AND has no other sources to pay for extra costs and assistance.¹¹⁴ It is less clear whether children or adolescents, disabled or not, can independently apply for hardship assistance¹¹⁵ under this legislation and regulation.

¹¹⁰ B.C. Reg. 75/97, s. 24(1)(b). Section 25 of the regulation outlines what the employment-related benefits are. They are: up to \$100 a month to assist with transportation and attendance costs for participating in an employment-related program; costs for tuition, books and supplies; and up to \$200 for required safety clothing. In addition, the minister may provide up to \$100 per month for a related volunteer incentive program. These volunteer incentive payments are time-limited in duration.

¹¹¹ Whether or not married.

¹¹² B.C. Reg. 75/97, s. 1, for the definition of "dependant."

¹¹³ B.C. Reg. 75/97, s. 24(1)(e).

¹¹⁴ B.C. Reg. 75/97, s. 1.

¹¹⁵ R.S.B.C. 1996, c. 27, section 4 allows for broad application of the regulation, and section 52 of the regulation (Ibid. note 25) includes a definition of "applicant" for hardship assistance that does not include age restraints. Please consult a lawyer for legal advice.

In regard to income assistance, *Fast Track: A Guide to the Ministry of Human Resources*¹¹⁶ addresses the following: persons with level one disabilities; young people under nineteen years living away from home; and disability benefits.

Concerning level one disability, the Guide states, “an *adult* who is medically unable to work for at least six months may qualify as a person with a level one disability.”¹¹⁷ On its face, this adult-limited interpretation appears to be incongruent with the actual wording of the *Income Assistance Regulation*.¹¹⁸ One must keep in mind, however, that the minister has discretion in the regulation about which benefits will be provided so is under no legal obligation in this regard. Youths with level one disabilities are dealt with under the section on “Youth Works,” a program that falls under another piece of legislation, *BC Benefits (Youth Works) Act*,¹¹⁹ which (as shall be discussed) does not apply to adolescents.

In reference to young people under nineteen living away from home, the Guide states that these people *may* be eligible for income assistance “only after reasonable efforts have been made to have the parent / guardian support the child.” The Guide does not specify what these reasonable efforts are, but again, this clause is discretionary and thus places no particular responsibility on the Ministry of Human Resources staff to make these efforts or provide income assistance if they decide not to do so.

The *BC Benefits (Youth Works) Act*¹²⁰ sets out a statutory regime for youth employment initiatives in the province. Despite the name of this Act, it does not apply to children or adolescents. This Act defines “youth” as between nineteen and twenty-four years old.¹²¹ The accompanying regulation is

¹¹⁶ Government of British Columbia. (Victoria: Ministry of Human Resources, 2001).

¹¹⁷ Government of British Columbia. *Fast Track: A Guide to the Ministry of Human Resources*. (Victoria: Ministry of Human Resources, 2001), p. 21.

¹¹⁸ B.C. Reg. 75/97, ss. 1 & 24(d).

¹¹⁹ R.S.B.C. 1996, c. 28.

¹²⁰ R.S.B.C. 1996, c. 28.

¹²¹ R.S.B.C. 1996, c. 28, s. 1.

the *Youth Works Regulation*.¹²² The way this legislative scheme applies to children and adolescents is that the youth may apply for this form of assistance on behalf of her or his family.¹²³ An interesting point is that a child living with the family is considered to be a member of the family *unless* this child is a person with disabilities.¹²⁴ The word “disabilities” is not defined. There is no mention of this clause in *Fast Track: A Guide to the Ministry of Human Resources*.¹²⁵

The *Disability Benefits Program Act*¹²⁶ establishes the legal parameters for disability benefits in British Columbia. The notable aspect of this Act and the associated regulation, *Disability Benefits Program Regulation*,¹²⁷ in relation to children and adolescents with special needs is that neither applies to persons under eighteen years. In fact, section 2 of the regulation states that although an applicant is generally considered to be applying for assistance on behalf of the family, if a child living with his or her family has disabilities, he or she is not considered to be a member of the family for the purpose of these benefits.

Health

The *Health Authorities Act*¹²⁸ sets out the legal framework for the administration of health services in British Columbia. This Act provides regional health boards with the authority and responsibility to develop and implement regional health plans which in part set out health services to be provided in given regions of the province.¹²⁹ The Act also mentions that the minister (of health) may designate community health councils by regulation. Due to this regional board / council structure in the field of health, there is no overarching general provincial health legislation or regulation that set out with precision the scope of these health services. The *Health Act*¹³⁰ is the governing legislation establishing health standards.

¹²² B.C. Reg. 77/97.

¹²³ B.C. Reg. 77/97, s. 2(2).

¹²⁴ B.C. Reg. 77/97, s. 2(4).

¹²⁵ The policy implications of this legislative provision are unclear to me.

¹²⁶ R.S.B.C. 1996, c. 97.

¹²⁷ B.C. Reg. 79/97.

¹²⁸ R.S.B.C. 1996, c. 180.

¹²⁹ R.S.B.C. 1996, c. 180, s. 5.

¹³⁰ R.S.B.C. 1996, c. 179.

There are no provisions in these statutes particular to children and adolescents with special needs. As mentioned, section 17 of the *Infants Act*¹³¹ deals with an infant consenting to medical treatment. This section establishes that an infant may consent to medical treatment without the consent of the parent or guardian. The qualifiers on this consent issue are twofold; that the health care provider is satisfied the infant understands the nature, consequences and reasonably foreseeable benefits and risks, and that the health care provider has concluded the health care is in the infant's best interests.

The *Continuing Care Act*¹³² provides for health care services to persons with a frailty or acute or chronic illness or disability not requiring admission to the hospital.¹³³ This Act also comes under the jurisdiction of the health ministry. The *Continuing Care Programs Regulation*¹³⁴ sets out programs to be administered under the continuing care program. One of the programs provided for under this regulation is the Plan F Pharmacare Program which is described as including the At Home Program for children with severe handicaps and the Associate Family Program that provides community based family-style care for children with multiple disabilities who live in residential settings. There are no further specifics about these programs in the regulation.

No specific legislative provisions exist that set out the authority for addiction and substance abuse services in British Columbia. The Ministry of Health Services has very recently taken over from the Ministry of Children and Family Development, the policy function for youth addiction services. As of Spring 2002, addiction services include: withdrawal management; outpatient services; day treatment programs; residential programs; and supportive recovery services.¹³⁵ Commencing on

¹³¹ R.S.B.C. 1996, c. 179.

¹³² R.S.B.C. 1996, c. 70.

¹³³ The criteria for hospital admissions are set out in the *Hospital Act*, R.S.B.C. 1996, c. 200.

¹³⁴ B.C. Reg. 146/95.

¹³⁵ See <http://www.healthservices.gov.bc.ca/addictions/programsandservices.html>, accessed 3/14/02. This area of policy and programming is currently in a state of immense flux so this information concerning addiction services may soon be out of date.

April 1, 2002, the implementation of services rests with local health authorities whereas the provincial government will maintain a provincial policy development role.

Mental health

The Ministry of Children and Family Development currently has the responsibility for child and youth mental health services in British Columbia; however, other than the more general *Child, Family and Community Services Act*¹³⁶ provisions I outlined, there is no legislation or regulations relating specifically to the terms of these community-based mental health services.¹³⁷ Currently, these child and youth mental health services comprise two components. The first is a network of mental health staff and specialists who work in an integrated fashion. The second is contracted services aimed at extending specialized programming.¹³⁸ This programming is aimed at children and adolescents with serious social, emotional and behavioural difficulties.

The governing mental health legislation in the province is aptly named the *Mental Health Act*.¹³⁹ This Act is quite different from other legislation in that it draws a distinction between people under sixteen years and people sixteen years and older. The resulting implication is that anyone sixteen years old can legally be treated like an adult within the mental health system.

The Act rather ambiguously defines a person with a mental disorder as someone with a disease of the mind who requires treatment and seriously impairs the person's ability to react appropriately to the environment and to associate with others.¹⁴⁰ This legislation also establishes the authority for Provincial mental health facilities throughout the province.¹⁴¹ There is an interesting provision in the Act pertaining to females (whether adolescent or adult) admitted to these mental health

¹³⁶ R.S.B.C. 1996, c. 46.

¹³⁷ The policy relating to child and adolescent mental health is currently being significantly rewritten. There is also in the works a Provincial Child and Youth Mental Health Plan that should soon be released by the British Columbia government. For further information, see http://www.mcf.gov.bc.ca/mental_health/mental_health1.htm, accessed 4/24/02.

¹³⁸ For information, see http://www.mcf.gov.bc.ca/mental_health/service_structure.htm, accessed 4/15/02.

¹³⁹ R.S.B.C. 1996, c. 288.

¹⁴⁰ R.S.B.C. 1996, c. 288, s. 1.

¹⁴¹ R.S.B.C. 1996, c. 288, s. 3.

facilities; they must be accompanied by a near relative or female person between the time of request and their admission.¹⁴²

The distinction between children and adolescents under sixteen and adolescents between sixteen and eighteen years comes into play in relation to some of the provisions in the Act. An adolescent who is sixteen years or older can voluntarily admit themselves to a designated facility without any involvement of a guardian or parent.¹⁴³ If however the person is less than sixteen years old, the parent or guardian must be involved and in fact request the admission. A person under sixteen years old must be checked regularly by a medical physician and discharged should this physician decide the person does not have a mental disorder.¹⁴⁴ This young person must also be provided with a notice to the parent at the age at which the director is satisfied that the young person is able to understand this notice.

In addition, if an admitted adolescent turns sixteen years old while in the facility after having been admitted by a parent or guardian, and the director is notified he or she wants to be discharged, the director must do so.¹⁴⁵

Should a person under sixteen years, whose guardian or parent has admitted him or her, desire to leave, the procedure the facility will follow is similar to an involuntary admission.¹⁴⁶ There is also provision in this Act to remove an adolescent from a youth custody centre to a Provincial mental health facility.¹⁴⁷

¹⁴² R.S.B.C. 1996, c. 288, s. 19.

¹⁴³ R.S.B.C. 1996, c. 288, s. 20 (1).

¹⁴⁴ R.S.B.C. 1996, c. 288, s. 20(3).

¹⁴⁵ R.S.B.C. 1996, c. 288, s. 20(6). There is no provision in the legislation speaking to the requirement on the staff of the facility to notify the director in a timely fashion. The "director" is defined in s. 1 as being the person appointed to be in charge of the designated facility.

¹⁴⁶ R.S.B.C. 1996, c. 288, ss. 21 & 22.

¹⁴⁷ R.S.B.C. 1996, c. 288, s. 29.

An interesting point about the *Mental Health Act* is that it does not set out any minimum age for a child to be admitted to a mental health facility, meaning that very young children could potentially fall under the jurisdiction of this legislation also. The *Mental Health Regulation*¹⁴⁸ supplements the provisions of the legislation. This regulation sets out the review panel hearing procedure for mental health patients.¹⁴⁹ In terms of children and adolescents under sixteen years old, section 21 of the Act stipulates that if the young person desires to leave without the support of his or her parent or guardian, the review panel procedure will proceed as though the case were a regular involuntary admission.¹⁵⁰

Youth justice

The *Correction Act*¹⁵¹ establishes the law relating to provincial corrections in the province including youth probation and youth custody centres. The age of young people who attend youth probation and youth custody centers is set out in both the federal and provincial youth justice legislation which will be discussed. The *Young Offenders (British Columbia) Act*¹⁵² is the name of the provincial youth justice Act.

The federal government has legal jurisdiction over criminal law in Canada. The *Youth Criminal Justice Act*¹⁵³ has received Royal Assent and will replace the *Young Offenders Act*;¹⁵⁴ however, at the date of writing, the *Young Offenders Act* is still the governing law. According to the *Young Offenders Act*, a “young person” is someone who is between twelve and seventeen years old or who was this age when he or she committed or was found guilty of a criminal offense.¹⁵⁵

¹⁴⁸ B.C. Reg. 233/99.

¹⁴⁹ B.C. Reg. 233/99, s. 6. See also *Mental Health Act*, R.S.B.C. 1996, c. 288, s. 25 for review panel procedure.

¹⁵⁰ *Mental Health Act*, R.S.B.C. 1996, c. 288, s. 22 relates to involuntary admissions, regardless of whether the mental health patient is under or over sixteen years old.

¹⁵¹ R.S.B.C. 1996, c. 74.

¹⁵² R.S.B.C. 1996, c. 494.

¹⁵³ *An Act in Respect of Criminal Justice for Young Persons and to Amend and Repeal other Acts*, Bill C-7, 2002.

¹⁵⁴ R.S.C. 1985, c. Y-1. There will likely be amendments to provincial legislation to be consistent with this new legislation.

¹⁵⁵ R.S.C. 1985, c. Y-1, s. 2.

Under the *Young Offenders (British Columbia) Act*,¹⁵⁶ no proceedings can be commenced against a young person for an offence committed by someone under twelve years old when the alleged offence occurred.¹⁵⁷ This Act deals with appropriate dispositions and related procedural matters for youths, between twelve and seventeen years old, who come in contact with the criminal justice system.¹⁵⁸ The possible means of disposition set out here are fines, community work, probation orders, prohibition or custody. It remains to be seen how this Act may change with the enactment of the federal *Youth Criminal Justice Act* which differs in some significant ways from *Young Offenders Act*.¹⁵⁹

There are no provisions in the British Columbia *Correction Act* specifically relating to adolescents with special needs; however, that is not to say that such adolescents will not find themselves in the youth justice system. Section 13 of the *Young Offenders Act* provides for a medical or psychological assessment to occur at the court proceeding stage. The assessment contents can be used by the court in terms of conditions attaching to disposition, whether supervision or custody.¹⁶⁰ Pursuant to section 13.2 of the *Young Offenders Act*, the mental disorder provisions of the federal *Criminal Code*¹⁶¹ apply to youths to the extent they are consistent with this youth legislation.

Pursuant to section 5 of the British Columbia *Correction Act*,¹⁶² a probation officer is a youth worker for the purposes of the federal *Young Offenders Act*. Section 37 of the *Young Offenders Act*¹⁶³ outlines in general terms the supervisory functions of a youth worker. There are no provincial

¹⁵⁶ R.S.B.C. 1996, c. 494.

¹⁵⁷ R.S.B.C. 1996, c. 494, s. 2.

¹⁵⁸ R.S.B.C. 1996, c. 494, s. 1, definition of "young person."

¹⁵⁹ A discussion of these differences is beyond the scope of this report. See <http://canada.justice.gc.ca/en/ps/yj/index.html>, accessed 04/02/02 for additional information.

¹⁶⁰ R.S.C. 1985, c. Y-1.

¹⁶¹ R.S.C. 1985, c. C-46.

¹⁶² R.S.B.C. 1996, c. 74.

¹⁶³ R.S.C. 1985, c. Y-1.

regulations in British Columbia pursuant to the *Correction Act* outlining more specifics of youth probation.

While in the youth custody centre, a youth is considered to be under the care, control and custody of the government.¹⁶⁴ The *Youth Correctional Programs Regulation*¹⁶⁵ accompanies this Act. Under this regulation, there is a duty on the youth supervisor at a youth correctional facility to advise the director if she or he believes the youth is physically or mentally ill.¹⁶⁶ If a youth is apparently ill, the director is supposed to ensure this youth has access to a medical officer.¹⁶⁷ Section 27 provides the director with the obligation to make reasonable efforts to ensure community and government agency services beneficial to youths are available. There are no specific legislative or regulatory provisions relating specifically to Aboriginal youths.

Education

The *School Act*¹⁶⁸ is the governing legislation that establishes and sets the terms for the public education system in British Columbia. It is important to note that the British Columbia government is currently in the process of making substantial amendments to the Act, which will likely have impacts on the education of children and adolescents with special needs. As it currently stands, Division 1 of the *School Act* concerns school age students and their entitlements within the educational system. "School age" is defined as between five years old by the end of the current year and nineteen years old.¹⁶⁹ If a person within this age range is resident in a particular school district, he or she is entitled to enroll in an educational program provided by the school district's board. There are not really any explicit provisions in the Act to address children or adolescents with special needs. Section 88 stipulates however that a board "must provide health services,

¹⁶⁴ R.S.B.C. 1996, c. 74, s. 29.

¹⁶⁵ B.C. Reg. 562/77.

¹⁶⁶ B.C. Reg. 562/77, s. 6.

¹⁶⁷ B.C. Reg. 562/77, s. 21. The definition of "medical officer" in s. 1 is a medical practitioner or registered nurse.

¹⁶⁸ R.S.B.C. 1996, c. 412. The provincial government is currently in the process of enacting significant amendments to the *School Act*, which will likely have significant impacts on the education of children and adolescents with special needs. See also *Public Education Flexibility and Choice Act*, Bill 28, 2002.

¹⁶⁹ R.S.B.C. 1996, c. 412. See s.1, definition of "school age" and s. 3(1).

social services and other support services for schools in accordance with any ministers' orders." This provision leaves much discretion to the minister.

Division 4 of the Act specifically relates to home schooling. There is no mention in the Act about home schooling parents' ability to access school district resources such as those directed to children and adolescents with special needs. The *Independent School Act*¹⁷⁰ provides the authority for schools with ten or more students other than public schools and run by non-profit authorities. This legislation contains no provisions specifically relating to children and adolescents with special needs; furthermore, the *School Regulation*¹⁷¹ refers only to the *School Act*. The following Ministerial Orders providing for specific policy therefore relate to the public school system established under the *School Act*.

The Special Needs Students Order¹⁷² defines "student with special needs" as a student: with a disability of an intellectual, physical, sensory, emotional or behavioral nature; with a learning disability; or with exceptional gifts or talents. According to this order, the student with special needs will be integrated into the classroom with other students unless the student's specific educational needs require the educational program be otherwise provided.

The Support Services for School Order¹⁷³ provides some more detail about services for children and adolescents of school age with special needs in the provincial public educational system. Hearing impaired students must be referred to the Ministry of Health for a needs assessment and if necessary, the Ministry of Education will then provide to the school board and routinely maintain auditory training equipment for every student requiring this equipment.¹⁷⁴ Speech and language therapy is to be provided through a school district board if a student's education is being adversely

¹⁷⁰ R.S.B.C. 1996, c. 216.

¹⁷¹ B.C. Reg. 265/89.

¹⁷² Ministerial Order 150/89, amended by M397/95.

¹⁷³ Ministerial Order 149/89.

¹⁷⁴ Ministerial Order 149/89, s. 2.

affected by his or her oral communication abilities.¹⁷⁵ For a student with an ongoing physical condition or disability serious enough to interfere with her or his attainment of education, there must be a medical assessment, then referral to occupational or physiotherapy consultation.¹⁷⁶ If a student requires complex health procedures including (but not limited to) gastrostomy care, tube feeding, oxygen administration, catheterization and suctioning, the school board must ensure that trained and medically supervised staff are available to carry out those procedures.¹⁷⁷

The Student Progress Report Order¹⁷⁸ applies to required written student progress reports pursuant to the *School Act* and *School Regulation*. Under this order, students with special needs may be provided with an individual education plan that modifies or replaces the course, subject and grade in the regular curriculum. A “student with special needs” is a student enrolled in an educational program that the Minister of Education specifies is for students with special needs. For both students with special needs and students with English as a second language, her or his student progress report must include: what the student is able to do; the areas in which the student requires more attention or development; and ways of supporting the student as set out in the individual education plan. The *Independent School Act*¹⁷⁹ governs non-public schools in the province. There are no provisions in this legislation specifically relating to special needs children and adolescents.

*Special Education Services: A Manual of Policies, Procedures and Guidelines*¹⁸⁰ is a policy framework document of the British Columbia Ministry of Education, Special Education Branch. This policy document provides more detail to the contents of the legislation and regulations. These educational special needs categories differ from particular medical diagnoses such as Fetal Alcohol Effect/ Fetal Alcohol Syndrome (FAE/ FAS) and Attention Deficit / Hyperactivity Disorder (AD/ HD) although children and adolescents with these kind of diagnoses will likely fall into one of

¹⁷⁵ Ministerial Order 149/89, s. 3.

¹⁷⁶ Ministerial Order 149/89, s. 4. It is not clear who would pay for these services.

¹⁷⁷ Ministerial Order 149/89, s. 5.

¹⁷⁸ Ministerial Order 191/94.

¹⁷⁹ R.S.B.C. 1996, c. 216.

¹⁸⁰ Government of British Columbia, (Victoria: Ministry of Education, 1995).

the prescribed categories of educational special needs and will be treated according to the educational special need category within the school system. In other words, there is no provision in the Ministry of Education's policy specifically addressing the unique needs that children or adolescents with certain diagnoses (such as FAE / FAS) may have, although those unique needs could certainly be worked into the educational planning for the diagnosed student. The following paragraphs reflect information contained in this policy document.

Mild intellectual disabilities are defined by intellectual functioning -2.01 to -3.00 standard deviations below the norm on a Level C assessment instrument of intellectual functioning. Adaptive behaviour is also supposed to be assessed in cases where it appears that a student may have a mild intellectual disability. Many of these students take part in regular school programming, sometimes with the implementation of some adaptations. In order for supplemental funding to be available for such students, an individual education plan should be devised to outline any required modifications, adaptations, and/or special materials to be used and measures of progress. Special education services must also be provided. Teachers who have students with mild intellectual disabilities are expected to take part in training for learning assistance. Teachers' assistants (TA's) can be employed, and these TA's should have training on intellectual disabilities.

Students with moderate to severe / profound intellectual disabilities are those persons whose intellectual functioning is greater than 3 standard deviations below the norm on the Level C assessment instrument. In addition, there is delayed adaptive behavior and functioning. In order for a district to qualify for supplemental funding, there needs to be an individual education plan and the provision of ongoing special education services. These students may require the support of any of the following: teachers' assistants; physiotherapists; occupational therapists; speech-language pathologists; and itinerant specialists who should work in a school-based team. The districts are expected to do regular evaluations of the progress of these students by means of criterion-based measures, curriculum-based assessment, teacher observations, student work samples and monitoring by way of the individual education plan. Either regular teachers with

training and specialist support or specialist teachers with learning assistance training are expected to work with these students.

Students with learning disabilities are those students who have difficulty with the acquisition and use of listening, speaking, reading, writing, reasoning or mathematical abilities. Problems in self-regulatory behaviour, social perception or social interaction may accompany the learning disability but are not in themselves, considered to be disabilities.¹⁸¹ Learning disabilities are classified as mild, moderate or severe. Generally, students with mild or moderate learning disabilities usually participate in the regular classroom with adapted classroom instruction combined with support by a learning assistance or school-based resource teacher. Students with severe learning disabilities are to receive regular support from a specialist teacher. Programs for these students are to include at least one of the following: remedial, corrective or skill-building instruction; adapted, modified or supplementary curriculum; alternate strategies for instruction and evaluation; availability of additional equipment; social skills training; or learning strategies. Most often, these students take part in the regular program with adaptations.

The Ministry of Education includes students who are gifted as having special needs. These students demonstrate abilities of exceptionally high capability in intellect, creativity or specific discipline skills. Multiple criteria are to be employed to determine whether or not a student is gifted including: teacher observations and notes; records of student achievements; nominations by associated adults or oneself, interview of parent and student. Formal assessments to Level C of cognitive ability, achievement, aptitude and creativity are also to be included. The policy sets out that for these students, a blend of opportunities in both the school and the community should be made available. Supplemental services for these students should include: independent guided education; availability of specialist teachers; district / community classes; special grouping with intellectual peers; mentorship's; consultative services for teachers; accelerating or compacting of

¹⁸¹ This definition is taken from Government of British Columbia, *Special Education Services: A Manual of Policies, Procedures and Guidelines*, (Victoria: Ministry of Education, 1995), quoting from the National Joint Committee on Learning Disabilities, p. E-11.

the academic program; opportunities to challenge courses; and opportunities to participate in enriched or advanced courses.

Students with behavior disorders are another recognized group of special needs children and adolescents within the school system. Behavior disorders include dysfunctional interactions between students and the environment, the latter being comprised of classroom, school, family, peers and community. The policy states that mild behavior disorders can be addressed through counseling and school-based services. The Ministry of Education considers a student to have a moderate behaviour disorder if he or she demonstrates any of the following: aggression (physical, emotional or sexual) and/ or hyperactivity; negative or undesirable internalized psychological states (anxiety, depression, stress-related disorders); behaviors related to such social problems as delinquency, substance abuse or child abuse/neglect;¹⁸² and/or behaviors associated with neurological or physiological condition or thought disorders. In addition, to be considered moderate, the frequency and severity of the behaviour has a disruptive effect on either the learning environment or personal adjustment, the behaviour carries on over an extended period of time and the student does not respond to regular classroom intervention or support.

The Ministry of Education will provide additional funding for moderate behavior disorder if an individual education plan and regular special education service are in place. Students with moderate behavior disorders may be eligible to participate in rehabilitative programs administered by the Ministry of Education and/or Ministry of Children and Family Development.

Formal assessment of behavior disorders includes a consideration of the behaviors in various settings with different people who are regularly in contact with the student. In addition, other medical causes or conditions need to be ruled out or addressed. The student's strengths and needs both need to be focused on. Whereas some of these students will be assessed as able to continue on in the regular classroom, others will be placed in specialized learning environments

¹⁸² The policy does not make it clear whether this latter provision applies to child abuse or neglect perpetrated ON the student or BY him or her; therefore, it arguably relates to both.

either temporarily or until the end of the schooling. Additional requirements for these students can include: in depth therapy or counseling; family supports; adapted or supplementary curriculum; and alternate instruction. There is, however, much discretion at the policy level in terms of whether or not and when these measures will be implemented.

Provisions of the policy relate specifically to severe behavior disorders. These students either consistently (or persistently over time) exhibit extremely disruptive behavior in the school and other environments, or the students have severe mental health conditions that result in profound withdrawal or internalizing behaviors. In addition, these students' behaviours warrant intensive intervention by community agencies other than the school and pose a serious risk to themselves or others. Finally, a severe behavior disorder is also one that is beyond the normal counseling and rehabilitative services capacity of the school to manage. According to the policy, these children should have access to intensive, coordinated school / community intervention based on inter-ministerial assessment. It is not clear from the policy how these inter-ministerial relations are to take place. Additional funding is available if the school district demonstrates it is incurring extraordinary expenses related to the programming. Planning needs to include an inter-agency review process and information about previous plans and interventions.

Students who are physically dependent with multiple needs constitute another category of special needs students. These students are completely dependent on others for daily living needs such as feeding, dressing, toileting, mobility and personal hygiene. These students require these forms of assistance in the school environment without which schooling would be impossible. The focus of the policy is on providing for these students to be as integrated as possible with other students; however, it is also acknowledged in this policy document that some of their needs will require privacy. The policy calls for adaptations to facilities and equipment to allow physical access by these students to most areas of the school. Teachers are to have trained supports available to them for working with these students. Depending on the students' particular needs, a qualified health professional may need to be present on a regular basis.

Students with deaf/blindness are those students with compounded visual and auditory impairment. The policy encourages multidisciplinary assessment processes as a means of gathering information about sensory acuities, physical development, orientation and mobility skill and knowledge, social development, academic abilities, educational achievement and communicative competence.

This policy document does not directly describe how multi-agency or multi-agency processes are going to take place; however, it references the *Inter-Ministerial Protocols for the Provision of Support Services in Schools* (October, 1989). These protocols relate to services provided by the following current ministries: the Ministry of Education; the Ministry of Health, the Ministry of Children and Family Development; and the Ministry of Attorney General. The focus of these protocols include the following:

- Provision of audiological services
- Generalized school health services
- School environment and health inspection of records
- Educational programs in containment or attendance programs
- Educational programs for treatment centers and hospitals
- Preschool programs for children with special needs
- In school support for special needs children
- Services to children and young people of school age with severe mental, behavioral and emotional disorders
- Psychological services
- Physiotherapy and occupational therapy
- Speech and language therapy
- Family and child services to support children in schools
- Provision of specialized equipment
- Policing in school and on school property.

The purposes of these protocols is to: facilitate the sharing of information; coordinate service responses such as interventions when there is abuse or neglect; provide specialized services; avoid duplication of services; and shorten response time.¹⁸³

Advisory council for disabilities

There is a statute entitled *Premier's Advisory Council for Persons with Disabilities Act*¹⁸⁴ which provides for a council of not more than twelve disabled persons or persons representing disabled persons to make recommendations about government programs and policies relating to disability issues and to promote disabled person's rights and opportunities.¹⁸⁵ There is no provision in this Act specific to children or adolescents with disabilities.

¹⁸³ This report does not include an analysis of any differences in these protocols as a result of the current Government of British Columbia's significant changes to services.

¹⁸⁴ R.S.B.C. 1996, c. 371.

¹⁸⁵ R.S.B.C. 1996, c. 371, s. 3.

The Federal Government of Canada

V

Federal law does not speak as directly to children and adolescents with special needs as does the provincial legislation due to the constitutional division of powers. The primary role of the federal government currently is the provision of funding and support for various related programs throughout the country.

Some federal Acts provide the context for particular areas that impact on children and adolescents with special needs in different ways. A current trend in federal government is very much to de-centralize policy-making; therefore, it becomes a challenging task to access all pertinent policy. It appears to me (from my outsider perspective) that there exist a number of federal government departments with closely related areas of responsibility, particularly in regard to Aboriginal children and adolescents. In addition, there are a number of policy areas without accompanying legislation.

From discussions with various federal government employees during the course of this research, it appears that in many cases the federal government of Canada is providing funding to various organizations and committees across the country to implement specific programs. This sometimes (but not always) occurs in cooperation or partnership with provincial government representatives. It seems that criteria for funding and contractual provisions are quickly replacing traditional centrally administered policy guidelines. The potential benefits of such an approach include the possibility of more relevant services for specific contexts.

An important question to raise about this relatively de-centralized approach is the issue of accountability. To enquire into accountability measures is beyond the scope of this report. From a legal point of view, it is more difficult to comprehensively track policy, practice, responsibly, and the extent to which government commitments are being fulfilled when programming and policy formulation are de-centralized to this extent. Many of the programs the federal government is currently funding are not specifically provided for in legislation and regulation. Another related concern is public access to information. The more organizations and committees involved in

establishing criteria, setting programming requirements and controlling funds, the more difficult it becomes for members of the public to be fully appraised of the programs and services available or potentially available to them. In addition, I query to what extent national standardization of services is compromised with this current policy practice and the potential disadvantage to rural and isolated populations.¹⁸⁶ I only raise these issues as questions. To examine the actual resulting implications is beyond the scope and outside the focus of this report, and I am not in a position to provide any kind of definitive opinion on these matters. Empirical research in this area of enquiry would be useful.

Federal transfers to the provinces

The *Canada Health Act*¹⁸⁷ concerns financial contributions, criteria and conditions by the federal government in the provision of insured health services and extended health care services. The provisions of this legislation do not enable any of the program initiatives currently being funded by and implemented through Health Canada that relate to children and adolescents with special needs. The provinces have constitutional jurisdiction over subject areas related to the administration of health services so it is necessary to consult the provincial legislation and policy in this regard. The preamble of the *Canada Health Care, Early Childhood Development and Other Social Services Funding Act*¹⁸⁸ purports to provide the legislative authority for the federal government's increased funding for services including health information, early childhood development and other social services; however, there are no specific provisions in this very short Act specifically addressing these matters. Rather, the contents of the Act are very limited to funding for medical diagnostic and treatment equipment and health information networks.

Another federal Act that addresses fiscal transfers is the *Federal-Provincial Fiscal Arrangements Act*.¹⁸⁹ Sections 13 and 14 of this Act provide for the Canada Health and Social Transfer whereby the federal government undertakes to provide funding to the provincial governments to finance

¹⁸⁶ On the other hand, how important is national standardization of services?

¹⁸⁷ R.S.C. 1985, c. C-6.

¹⁸⁸ S.C. 2000, c. 35.

¹⁸⁹ R.S.C. 1985, c. F-8.

“social programs in a manner that provides provincial flexibility.”¹⁹⁰ The stated purpose of this transfer arrangement is to maintain criteria and conditions of the *Canada Health Act* and to maintain comprehensiveness, universality, portability and accessibility. The *Canada Health and Social Transfer Regulations*¹⁹¹ are enacted pursuant to this Act and outline computations for these transfers.

Social Union

In regard to children and adolescents with special needs, the federal government’s current policy approach rests within the context of the Social Union Framework. This framework provides for a new form of partnerships with provincial governments (except Quebec) in providing for Canada’s social service system. The Federal-Provincial-Territorial Council on Social Policy Renewal, established in 1996, is responsible for directing and guiding this process. *A Framework to Improve the Social Union for Canadians: An Agreement between the Government of Canada and the Governments of the Provinces and Territories* was signed by representatives of the three levels of government in 1999. The objective of this framework is to blend the roles of the two levels of government so that the “watertight” policy approaches of yesteryear’s federal and provincial governments become, as one policy observer suggests, “passé.”¹⁹² Related components of this social union arrangement impacting on children and adolescents with special needs include the National Children’s Agenda (including Early Childhood Development) and Benefits and Services for Persons with Disabilities. I would raise a question concerning the extent to which the current British Columbia Government’s policy agenda addresses or incorporates the Social Union vision.

National Children’s Agenda

The National Children’s Agenda, announced in 1997 is a long-term action plan to guide the coordination between provincial governments (except Quebec), some Aboriginal organizations, and the federal government. The National Children’s Agenda (1997) pertains to developing a

¹⁹⁰ R.S.C. 1985, c. F-8, s. 13(1)(a).

¹⁹¹ SOR/97-468.

¹⁹² Richards, J. (March 2002). The paradox of the social union framework agreement. *C.D. Howe Institute Backgrounder*, 59.

vision for policy direction relating to children.¹⁹³ This policy vision framework has direct implications for children and adolescents with special needs. The Ministerial Council on Social Policy Renewal is responsible for working on the agenda. This council collaborated with Aboriginal organizations in creating the agenda.¹⁹⁴ In broad terms, the National Children's Agenda represents a commitment by federal and provincial government representatives to work together to develop benefits and services in the fields of children's health, social services, justice and education.¹⁹⁵

Early childhood development is a stated priority of the National Children's Agenda. In 2000, the federal, provincial (except Quebec) and territorial governments signed the *Early Childhood Development Agreement*.¹⁹⁶ Under this agreement's priority areas, the Government of Canada is committing to provide funding over a five-year period to provincial and territorial governments to do the following:

- Promote healthy pregnancy, birth and infancy;
- Improve parenting and family supports;
- Strengthen early childhood development, learning and care; and
- Strengthen community supports.¹⁹⁷

The focus of the agreement is on children under six years old. The intention is that this funding commitment will translate into prenatal classes and screening, preschool programs and child care,

¹⁹³ Government of Canada, *Background Information on the National Children's Agenda, announced in the Speech from the Throne, September 23, 1997*, http://www.socialunion.gc.ca/nca/nca1_e.html, accessed 4/11/2002.

¹⁹⁴ Government of Canada, *Public Dialogue on the National Children's Agenda – Developing a Shared Vision*, <http://www.socialunion.gc.ca/nca/June21-2000>, accessed 4/16/2002.

¹⁹⁵ See Valentine, F. *Enabling citizenship: Full inclusion of children with disabilities and their parents*, (Ottawa: Canadian Policy Research Networks, 2001) for information about the National Children's Agenda and children with disabilities.

¹⁹⁶ Government of Canada. *Federal/ Provincial/ Territorial Early Childhood Development Agreement: Report on Government of Canada Activities and Expenditures 2000-2001*, 1 (Ottawa: Health Canada, Human Resources Development Canada and Indian and Northern Affairs Canada, 2001), p. 1. See Valentine, F. *Enabling Citizenship: Full Inclusion of Children with Disabilities and their Parents* (Ottawa: Canadian Policy Research Networks, 2001) for further discussion about the implications of this agreement.

¹⁹⁷ Government of Canada. *Federal/ Provincial/ Territorial Early Childhood Development Agreement: Report on Government of Canada Activities and Expenditures 2000-2001*, (Ottawa: Health Canada, Human Resources Development Canada and Indian and Northern Affairs Canada, 2001), p. 3.

and parent information and family support at the provincial policy level. First Nations groups are also to be involved in the implementation of these programs on reserve.

National Child Benefit

The Government of Canada website describes the National Child Benefit as both a federal supplement through the Canada Child Tax Benefit¹⁹⁸ and a reinvestment in “enhanced programs and services for low income children and families” including five key areas: child benefits and earned income supplements; child/day care initiatives; early childhood services and children-at-risk services; and supplementary health benefits and other services.¹⁹⁹ A goal of the initiative is to encourage and support parents to be in the workforce. Accordingly, this policy direction coincides with provincial changes to social assistance and other programs.²⁰⁰ In terms of the applicability of this initiative to children and adolescents with special needs, it is necessary to review the provincial legislative and policy context for delivery of specific services that I have outlined in this report.²⁰¹ In addition, the British Columbia government’s current adjustments to policy and services will likely reflect some of this joint provincial / federal direction.

Fetal Alcohol Effect / Fetal Alcohol Syndrome (FAE / FAS) Initiative

Within the federal government’s current policy direction under the National Children’s Agenda, a number of program areas exist aimed specifically at First Nations and Aboriginal children. Funding in the federal budget for the Fetal Alcohol Effect / Fetal Alcohol Syndrome (FAE / FAS) Initiative outlines broadly stated primary activities of this initiative, including:

- Public awareness and education;
- FAS / FAE training and capacity development;

¹⁹⁸ The Canadian Customs and Revenue Agency is responsible for this measure. There are two components including a basic benefit to 80% of families with children and National Child Benefit Supplement for low income families. For more information, see <http://www.nationalchildbenefit.ca/ncb/govtofcana1.shtml>, accessed 4/18/02.

¹⁹⁹ Government of Canada. *The National Child Benefit: Description of reinvestments*. Available at <http://www.nationalchildbenefit.ca/ncb/progdsc.shtml>, accessed 4/18/2002.

²⁰⁰ Government of Canada. *The National Child Benefit: Description of reinvestments*. Available at <http://www.nationalchildbenefit.ca/ncb/progdsc.shtml>, accessed 4/18/2002.

²⁰¹ Supported Child Care is a British Columbia program for children with special needs that relates to the National Child Benefit.

- Early identification and diagnosis;
- Coordination;
- Surveillance;
- Strategic project funding.²⁰²

The intention is that much of this initiative is to be incorporated into other existing programs such as Aboriginal Head Start and Community Action Program for Children.

The First Nations Inuit and Health Branch of Health Canada is providing funding for FAE / FAS programs to be developed on and off reserve, again under the National Children's Agenda umbrella. There is no legislation and regulation pertaining to this funding and programming. FAE / FAS components are also integrated in Aboriginal Head Start and Community Action Program for Children (CAPC).

Aboriginal Head Start

The Aboriginal Head Start program, funded by Health Canada, is an example of a specific program occurring within the context of the National Children's Agenda, and particular to Aboriginal people. There are on and off-reserve (First Nations and Aboriginal) components to this program. The programs are locally controlled and designed. There is no legislation or regulation that directly relates to these programs. Current principles and guidelines attach to urban and northern Head Start (off-reserve). The on-reserve portion of this programming area is more recent. A document entitled *Aboriginal Head Start Urban and Northern Initiative: Principles and Guidelines*²⁰³ establishes standards for Aboriginal Head Start programs across the country that are to be carried out by local Aboriginal organizations. According to these guidelines, each program is to include the following components:

- Culture and language;
- Education;
- Health promotion (for children, parents and caregivers);

²⁰² Government of Canada. *Federal/ Provincial/ Territorial Early Childhood Development Agreement: Report on Government of Canada Activities and Expenditures, 2000-2001*, (Ottawa: Health Canada, Human Resources Development Canada, Indian and Northern Affairs Canada, 2001), p. 10.

²⁰³ Government of Canada. *Aboriginal Head Start Program*, (Ottawa: Health Canada, 1998).

- Nutrition;
- Social support for families;
- Parental and family involvement.

The primary emphasis is on children three to five years old. There are guidelines in this document particular to the issue of accountability. In signing an agreement to implement Head Start programs, Aboriginal organizations undertake to comply with these *Principles and Guidelines*. Specific accountability measures for these organizations include their contractual obligation to: establish management structures; develop mechanisms such as conduct codes and codes of ethics; develop conflict of interest guidelines and policy and procedure manuals; do informal reporting to the community; report project activities to the government; and ensure independent evaluation occurs.

Community Action Program for Children (CAPC)

Another federally funded program under the National Children's Agenda is the Community Action Program for Children (CAPC). It is a very de-centralized approach lacking centrally developed operational policy. This program, funded by Health Canada, is intended to address health and social development needs of either Aboriginal or non-Aboriginal children from birth to six years old living in risky conditions such as low-income families, teenage-parent families and those children with developmental delays. There is an FAE / FAS component.²⁰⁴ The emphasis of CAPC is on locally developed and administered "community-based" programs to be funded by the federal government.²⁰⁵ Joint Management Committees of Health Canada representative, provincial representatives and community organizations as appropriate manage and set province-specific

²⁰⁴ Government of Canada. *CAPC/CPNP National Projects Fund* (Ottawa: Health Canada, updated 2001), at <http://www.hc-sc.gc.ca/hppb/childhood-youth/cbp/npf/index.html>, accessed 1/31/02.

²⁰⁵ Government of Canada. *Community Action Program for Children (CAPC): National Evaluation Fact Sheet, Series 2, Number 1* (Ottawa: Health Canada, 1998, updated 2001) at <http://www.hc-sc.gc.ca/hppb/childhood-youth/cbp/capc/evaluations/s2n1.htm>, accessed 4/25/02.

priorities for CAPC; Health Canada has an evaluation role.²⁰⁶ Administrative protocols guide how the program is to be managed in each province and territory.²⁰⁷

National Native Alcohol and Drug Abuse Program

The National Native Alcohol and Drug Abuse Program has a Youth Solvent Abuse component and is funded by Health Canada. First Nations communities and organizations in the areas of treatment, prevention, training, research and development largely control the program. Because this program is aimed at increasing First Nations and Inuit control over health programs and resources, there appears to be little or no centralized federal policy development in regard to specific programming content.²⁰⁸

Indian Act

The federal *Indian Act*²⁰⁹ is the governing piece of legislation for “Indians and lands reserved for the Indians.” This Act therefore has applicability in situations where a child or adolescent with special needs has or is eligible for Indian status or resides on an Indian reserve. Under section 18, Indian Affairs and Northern Development Canada may authorize the use of land on reserve for an Indian school, health projects or with the consent of the band, any other purpose for the general welfare of the band.²¹⁰ There remain in the *Indian Act* provisions for schooling of Indian children. According to section 114, the Minister of Indian Affairs can enter into an agreement with a provincial government, a school board or a religious or charitable organization for the education of Indian children. Section 115 outlines that Indian Affairs and Northern Development Canada can

²⁰⁶ Government of Canada. *Community Action Program for Children (CAPC): National Evaluation Fact Sheet, Series 1, Number 1* (Ottawa: Health Canada, 1998, updated 2001) at <http://www.hc-sc.gc.ca/hppb/childhood-youth/cbp/capc/evaluation/s1n1.htm>, accessed 4/25/02.

²⁰⁷ Government of Canada. *Community Action Program for Children (CAPC)*. (Ottawa: Health Canada, updated 2001), at <http://www.hc-sc.gc.ca/hppb/childhood-youth/cbp/capc/index.html>, accessed 1/31/02.

²⁰⁸ Government of Canada, *Terms of Reference: National Native Alcohol and Drug Abuse Program, General Review* (Ottawa: Health Canada, undated). In collaboration with First Nations, Health Canada has a review role. See http://www.hc-sc.gc.ca/fnihb-dgspni/fnihb/chp/nnadap/treatment_centres/index.htm, accessed 4/18/2002, for a directory of programs across the country.

²⁰⁹ R.S.C. 1985, c. I-5.

²¹⁰ The wording of section 18, R.S.C. 1985, c. I-5, suggests that the band's consent is not needed for Indian schools and health projects although practice could differ.

establish regulations pertaining to the schooling of Indian children. There are currently none. According to section 116, every Indian child between seven and sixteen years old is to attend school. An exception in section 117 concerns a child who, due to sickness or another unavoidable cause, cannot attend and who reports promptly to the principal. Remaining in section 119 is the rather antiquated authority for truant officers to enforce Indian children going to school. Subsection 119(6) provides a truant officer with power to take an Indian child, who is absent from school contrary to the Act, into custody and use as much force as the circumstances require.

Section 88 of the *Indian Act* establishes that all provincial laws of general application are applicable to Indians unless they are inconsistent with the provisions of this Act; therefore, the provincial laws I have discussed have general applicability to Indians and Indian reserves.

The current policy direction of Indian Affairs and Northern Development Canada is (at least on the surface) less punitive than the stringent provisions of the *Indian Act*. The document *You Wanted to Know: Federal Programs and Services for Registered Indians*²¹¹ sets out current programs. Programs aimed at youths on reserves are programs that potentially have direct implications for children and adolescents with special needs. With respect to adolescents, employment is the focus of programming in this government department. The First Nations and Inuit Youth Employment Strategy commenced in 1996. These programs relate to "youths" who include adolescents fifteen years and older (up to thirty years). These programs are "highly de-centralized and are administered by First Nation and Inuit communities."²¹² An aspect of current youth practice is the Youth Work Program, aimed at providing employment supports and opportunities to youths who have dropped out of school. There is no specific provision within this program to address youths with special needs; however, there is a high risk youth component to these programming areas. In British Columbia, the coordinating body for the province is the First Nations Education

²¹¹ Government of Canada. (Ottawa: Minister of Indian Affairs and Northern Development, 1999).

²¹² Government of Canada. *You Wanted to Know: Federal Programs and Services for Federal Indians* (Ottawa: Minister of Indian Affairs and Northern Development, 1999), p. 9.

Steering Committee.²¹³ The purposes of this committee are to liaise with First Nations governments and agencies and to administer implementation of programs directed at youths.²¹⁴ From my discussions with representatives at Indian Affairs and Northern Development Canada, it seems that the federal government is not setting policy around this programming area.²¹⁵ In addition, Indian Affairs and Northern Development Canada will be putting funding into special education on reserve; however, the policy parameters around that initiative have not yet been worked out as of the date of writing this report.

Employment and disability issues

There are two main areas of Human Resource and Development Canada (HRDC) focus that have implications for adolescents with special needs who are fifteen years or older. These are youth initiatives and disability issues. The youth initiative is focused on employment for youth (who according to the federal government are between fifteen and thirty years old).²¹⁶ There is no special needs component to these youth initiatives; however, there are centrally established guidelines relating to high-risk youths aimed at increasing their employability.²¹⁷ With respect to Aboriginal youths, Aboriginal organizations and the federal, provincial and territorial governments jointly articulated the *National Aboriginal Youth Strategy* (December 1999).²¹⁸ This strategy is a broad vision statement that establishes the framework for future policy development. It is not itself operational policy.

HRDC has the primary responsibility for implementing the federal government's part of the Disability Agenda. In 1998, federal, provincial and territorial ministers released *In Unison: A*

²¹³ *First Nations Education Steering Committee*. <http://www.fnesc.bc.ca>, accessed 01/13/03.

²¹⁴ A question I raise relating to the function of this independent society administering this programming is the question of accountability. Further research into accountability mechanisms attaching to the implementation of these programs would be useful.

²¹⁵ In addition, there may be a lack of linkage with other federally funded programs directed at children and adolescents with special needs due to lack of federal coordination. Further research is required in this regard.

²¹⁶ For more information, see <http://youth.hrdc-drhc.gc.ca/common/nyep-themes.shtml>, accessed 4/16/02.

²¹⁷ This information I obtained from a representative of Human Resource Development Canada.

²¹⁸ Government of Canada. (Ottawa: Human Resource Development Canada, 2001).

*Canadian Approach to Disability Issues*²¹⁹ that sets out the parameters of the agenda. The disability agenda is aimed at adults who are defined as anyone fifteen years or older; therefore, older adolescents are included.²²⁰ Closely related to the Social Union arrangement, this policy framework document addresses employment, income and supports for disabled persons. Although this document includes many broad principles, it does not include a lot of specifics about what the federal government is actually proposing to do in this area of focus nor does it outline the provincial governments' reciprocal responsibilities. The articulated policy directions listed in this document are as follows:

- Policies that promote access to generic programs and services for all Canadians including persons with disabilities;
- Policies and programs that promote greater access to supports;
- Policies that separate access to supports from eligibility for income and other programs;
- More consumer control, flexibility and responsiveness in the provision of disability supports;
- Measures that provide greater assistance for disability costs;
- Widespread understanding and application of the concept of accommodation;
- Measures that provide more assistance to offset work-related disability costs;
- Greater support for community economic development and self-employment for persons with disabilities;
- Enhanced employability through better access to education, training and transition mechanisms;
- Income programs that reduce financial disincentives to work;
- Income programs that separate access to disability supports from eligibility for financial assistance;

²¹⁹ Government of Canada. *In Unison: A Canadian Approach to Disability Issues. A Vision Paper: Federal/ Provincial/ Territorial Ministers Responsible for Social Services*, (Ottawa: Human Resources Development Canada, 1998).

²²⁰ An important point is that in British Columbia, the Ministry of Human Resources takes a lead role in administering disability assistance legislation and formulating disability benefits policies. As discussed previously in the report, the British Columbia *Disability Benefits Program Act*, R.S.B.C. 1996, c. 97 and *Disability Benefits Program Regulation*, B.C. Reg. 79/97, limits disability benefits to persons eighteen years and older.

- Improved coordination of assessment procedures and rehabilitation between income programs;
- Income programs that continue to ensure financial assistance when labour market participation is interrupted or not possible.

Again, there is no accompanying legislation that sets out exactly what the federal government is proposing to do. It is a Vision Paper and the policy statements are very broad and rather ambiguous in terms of resulting concrete programming and services.

VI

Conclusions and Recommendations

In undertaking this review of British Columbia and Federal law and policy direction pertaining to children and adolescents with special needs, a number of areas of concern have come to my attention. The foremost of these concerns is the issue of accountability. By accountability, I mean the extent to which the public service delivery providers are accountable not only to members of the public, but also, to those individuals who need access to the services, notably the children and adolescents themselves and their families.

The relatively de-centralized and fragmented nature of social policy at the two levels of government, as outlined in this report, has significant implications for children and adolescents with special needs and their families due to the potentially multi-faceted nature of special needs. This report has touched on a number of areas of the law and associated policy in which service delivery challenges present themselves. From the perspective of children and adolescents with special needs and their families, some particular concerns include: limited non-lateral mandates of government ministries and programs; incongruence in age criteria for eligibility to various child and youth programs; differing definitions of the concept of "special needs;" lack of awareness by some senior level government employees about other associated programming areas; and lack of coordination in some areas in developing policy and delivering services. Having said that, I should also note the existence of some commendable examples of government agencies working together and with others in meaningful, collaborative and innovative ways. These efforts will hopefully be strengthened and supported further in the future. The opportunity exists as we are currently in a time of change in British Columbia.

Due to time and access constraints, I was not able to review all relevant policy. During the time I spent on this report, I found it very challenging to locate and obtain all relevant operational policy, particularly at the federal level. Due in part to my geographical location in Prince George, British Columbia, I conducted some of my research as rurally located members of the public would do, that is, by way of telephone, facsimile and government website searches. I did not have the luxury

of going to government libraries and meeting face-to-face with government representatives. In undertaking my research in this way, I discovered a lack of publicly accessible documentation setting out the specifics of what government is undertaking to do in the various subject areas related to children and adolescents with special needs.

In the place of publicly available specific policy statements at the federal government level exist a number of broad, ambiguously worded visionary frameworks. Vision statements set the context, but they are not policy *per se*. They do not match specific identifiable responsibilities with particular publicly accountable civil servants or government agencies. It seems to me that Canada is currently experiencing a time of flux in public policy formulation and implementation as we as a society move away from heavily centralized government institutions toward more localized service development and delivery.

While I acknowledge the importance of addressing the needs specific to given locales, I also raise a number of related questions. To what extent are rural and isolated communities affected by a move toward de-centralization, whether for the better or worse? Are the standards of program delivery across the country compromised or improved by this trend of de-centralization? Where does the responsibility lie for the provision of specific services? Where does accountability for specific government-funded programming now lie? How are accountability procedures affected by de-centralization? How do children and adolescents with special needs and their families find out about all the services available to them, and their entitlements, in this regard? Are universal principles of law articulated in international declarations such as the United Nations' Convention for the Rights of the Child²²¹ being carried over into these emerging approaches or, conversely, are they being compromised and forgotten? To what extent do these universal principles still have meaning and value in contemporary Canadian society? Who still has a sense of the 'big picture'? What is the big picture? Do we need to have a big picture or do we require, a series of 'little pictures' from region to region, or even community to community, across the country? Another

²²¹ United Nations, CRC/C/15/Add.49 (13 February 1996).

question I raise is the extent to which current social policy visions of the British Columbia and federal governments are compatible.

I do not provide answers to these questions in this report. That is not why I raise them. Some of them are primarily philosophical; others are more pragmatic. They are questions to consider as we collectively strive toward creating a more responsive and supportive society for children and adolescents with special needs and their families.

Recommendations for Future Consideration

Based on the foregoing, my recommendations for future work related to law and policy for children and adolescents with special needs are:

- Conduct further comprehensive policy research that will necessitate a cooperative and active role on the part of independent researchers and informed government representatives at both levels of government;
- Update the information in this report as current government approaches to policy and services progress;
- Examine the intersection between legislation, regulation and policy and actual service delivery and assess the extent of reconciliation and congruence between the two;
- Conduct further research about the experiences of special needs children and adolescents in social assistance, child protection, youth justice, adoption and other child-targeting government-funded programs;
- Conduct further research into gaps in law and policy for children and adolescents with special needs;
- Conduct further research into rural / isolated people's access to information and services for children and adolescents with special needs (in comparison to urban-based services and access to information);
- Comparatively evaluate Aboriginal and First Nations specific and other child and adolescent special needs government policies (in regard to the latter, particularly those that are not available to First Nations people) and assess the implications of such

differences (as discussed, there are some differences between policy and services for Aboriginal or First Nations vs. non-Aboriginal or non First Nations service users);²²²

- Conduct further research into accountability attaching to the provision of services for children and adolescents with special needs;
- Advocate for the enactment of additional law or readily accessible policy that places specific responsibilities with identifiable service providers;
- Develop further law and policy to address existing gaps such as substance abuse related issues and multiple needs children and adolescents whose needs transcend existing government policy and program divisions.

²²² A point worth noting in this regard is that usually the difference in policy and services is between reserve-based and non-reserve, but not always. Sometimes the difference is based on Aboriginal vs. non-Aboriginal.

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