

Communication and Information Sharing Protocol

BETWEEN

The Representative for Children and Youth

AND

The Ministry of Children and Family Development

AND

The Provincial Director of Child Welfare, a designated director under the *Child, Family and Community Service Act*

WHEREAS:

- A.** The Representative for Children and Youth (RCY), the Ministry of Children and Family Development (MCFD), and the Provincial Director of Child Welfare (*CFCSA* director) enter into this Communication and Information Sharing Protocol (hereinafter referred to as the Protocol) for the purpose of ensuring a clear and mutual understanding of their respective roles and mandates with respect to communication and information sharing and to ensure the RCY is able to exercise functions effectively and that both organizations achieve the best possible results for children and youth in B.C.
- B.** This protocol will be administered in a manner characterized by collaboration, communication, cooperation and a commitment to problem solving.
- C.** RCY and MCFD will meet regularly to discuss how their respective mandates are being implemented and to collaborate on finding ways to improve functioning as follows:
 - (a) Meetings between RCY and the Minister of MCFD will be held on a mutually agreed upon schedule.
 - (b) Meetings between RCY and the Deputy Minister of MCFD will be held on a mutually agreed upon schedule.
 - (c) Senior managers from MCFD, the *CFCSA* director and RCY will meet and communicate as necessary to stay informed about matters of mutual interest.
 - (d) RCY and MCFD will provide reasonable advance notice to each other of significant events, announcements and program or policy changes and will share advance copies of communication materials/documents.
- D.** This Protocol replaces any previous information sharing protocols or agreements between MCFD and RCY.
- E.** This Protocol may be reviewed at any time on mutual consent of the parties.

PROTOCOL CONTENTS:

Parts 1 – 6 of the Protocol provide an overarching framework;

1. Parties, Functions, Rights and Principles
2. Definitions
3. The Right and Duty to Provide Information
4. RCY Access to MCFD Information Systems
5. Youth Criminal Justice Act (*YCJA*) Records
6. Confidentiality and Security

Parts 7 – 9 of the Protocol apply to the specific statutory functions of the Representative;

7. Advocacy
8. Monitoring and Special Reports
9. Critical Injuries and Deaths

PART 1 – PARTIES, FUNCTIONS, RIGHTS AND PRINCIPLES

1.1 The RCY is an independent officer of the Legislature whose statutory responsibilities as they relate to MCFD include exercising the functions set out in Section 6(1)(a), (b) and (c) of the *Representative for Children and Youth Act (RCY Act)*:

- 6(1) The representative is responsible for performing the following functions in accordance with this Act:
 - (a) support, assist, inform and advise children and their families respecting designated services, which activities include, without limitation,
 - (i) providing information and advice to children and their families about how to effectively access designated services and how to become effective self-advocates with respect to those services,
 - (ii) advocating on behalf of a child receiving or eligible to receive a designated service, and
 - (iii) supporting, promoting in communities and commenting publicly on advocacy services for children and their families with respect to designated services.
 - (b) monitor, review, audit and conduct research on the provision of a designated service by a public body or director for the purpose of making recommendations to improve the effectiveness and responsiveness of that service, and comment publicly on any of these functions;
 - (c) review, investigate and report on the critical injuries and deaths of children as set out in Part 4.

In addition, in accordance with Section 20 of the *RCY Act*, the RCY may issue special reports.

1.2 MCFD is a provincial government ministry with responsibility for the following statutes: *The Child, Family and Community Service Act (CFCSA)*, the *Adoption Act*, the *Youth Justice Act* (as well as the administration of the federal *Youth Criminal Justice Act*), the *Child Care B.C. Act*, the *Child Care Subsidy Act*, and the *Social Workers Act*. In accordance with the *United Nations Convention on the Rights of the Child* (UNCRC), the services delivered to children and youth incorporate the rights, voice and interests of the child in decision-making processes and recognize advocacy as a tool to support their active participation.

Section 70 of the *CFCSA* outlines the rights of children in care. Two of those rights are specific to the RCY and pertain directly to this protocol:

70(1) Children in care have the following rights:

(m) to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the *Representative for Children and Youth Act*, the Ombudsperson, a member of the Legislative Assembly or a member of Parliament;

(n) to be informed about and to be assisted in contacting the representative under the *Representative for Children and Youth Act*, or the Ombudsperson;

1.3 This protocol is informed by the *United Nations Convention on the Rights of the Child* which recognizes that “children are entitled to participate in decisions that affect them with their views given due weight according to their age and maturity.”

1.4 This protocol is further informed by the *United Nations Declaration on the Rights of Indigenous Peoples* which recognizes “the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.”

1.5 This protocol is further informed by the *United Nations Convention on the Rights of Persons with Disabilities* which states “parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

PART 2 – DEFINITIONS

2.1 “**Child**” is defined in the *RCY Act* and *CFCSA* as a person who is under 19 years of age.

2.2 “**Youth**” is defined in the *RCY Act* and *CFCSA* as a person who is 16 years of age or older but under 19 years of age.

2.3 “**Designated services**” are defined in section 1 of the *RCY Act*:

"designated services" means any of the following services or programs for children and their families provided under an enactment or provided or funded by the government:

(a) services or programs under the [Adoption Act](#), the [Child Care BC Act](#), the [Child Care Subsidy Act](#), the [Child, Family and Community Service Act](#), the [Community Living Authority Act](#) and the [Youth Justice Act](#);

(b) early childhood development and child care services;

(c) mental health services for children;

(d) addiction services for children;

(e) services for youth and young adults during their transition to adulthood;

(f) additional services or programs that are prescribed under section 29 (2)

(a);

2.4 “**Reviewable services**” are defined in section 1 of the *RCY Act*:

"reviewable services" means any of the following designated services:

(a) services or programs under the [Child, Family and Community Service Act](#) and the [Youth Justice Act](#);

(b) mental health services for children;

(b.1) addiction services for children;

(c) additional designated services that are prescribed under section 29 (2) (b);

PART 3 – RIGHT TO INFORMATION AND DUTY TO PROVIDE INFORMATION

3.1 Subsections 10(2) - (4) of the *RCY Act* confer upon the RCY, by operation of law, ongoing information rights. The same provisions impose corresponding and ongoing legal duties on public bodies including MCFD:

- 10 (2) The representative has the right to any information that
 - (a) is in the custody or control of
 - (i) a public body other than an officer of the Legislature, or
 - (ii) a director, and
 - (b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.
- (3) The public body or director must disclose to the representative the information to which the representative is entitled under subsection (2).
- (4) This section applies despite
 - (a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
 - (b) any other enactment, other than a restriction in section 51 of the *Evidence Act*.

3.2 MCFD, as a “public body” as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act (FIPPA)*, and the *CFCSA* director are required to disclose information to the RCY in response to a request made pursuant to s. 10 of the *RCY Act*.

3.3 Where section 10 applies, MCFD and the *CFCSA* director are required to provide any record in its custody or control, even if MCFD did not create the document and the document was created by a third party. MCFD and the *CFCSA* director are not required to create new records (e.g., summaries, memos, reports) to satisfy RCY requests.

3.4 *FIPPA* expressly authorizes MCFD and any other public body required to provide information under section 10, to disclose personal information to the RCY: *FIPPA*, section 33.1(1)(c). Subsection 79(d) of the *CFCSA* expressly authorizes the *CFCSA* director to disclose information required by section 10 to the RCY.

PART 4 – RCY ACCESS TO MCFD INFORMATION SYSTEMS

4.1 RCY staff receives read-only access to some MCFD information systems (e.g., ICM, MIS-SWS, MCFD Intranet, Corporate Data Warehouse) under the following conditions:

- (a) the information is necessary to enable the RCY to exercise powers or perform duties under the *RCY Act*; and
- (b) the RCY agrees to abide by the security requirements governing MCFD information systems.

PART 5 – YOUTH CRIMINAL JUSTICE ACT (YCJA) RECORDS

5.1 Sections 119(1)(l) and (r) of the *YCJA* provide as follows:

119(1) Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:

(l) a coroner of a person acting as a child advocate, whatever his or her official designation might be, who is acting in the course of his or her duties under an Act of Parliament or the legislature of a province;

(r) a person or a member of a class of persons, designated by order of the Governor in Council, or the lieutenant governor in council of the appropriate province, for a purpose and to the extent specified in the order.

5.2 When performing the advocacy function under s. 6(1)(a) of the *RCY Act*, the RCY falls under s. 119(1)(1) of the *YCJA*.

5.3 Pursuant to s. 119(1)(r) of the *YCJA*, the provincial Lieutenant Governor in Council enacted Order in Council 428/2007 (“the 2007 OIC”). The 2007 OIC added the Representative to the list of provincial authorities listed in the Schedule to Order in Council 0267/2003. Taken together, these amendments state:

4. The following persons, or members of a following class of persons, on request, must be given access to a record kept under section 114 of the Act and may be given access to a record kept under section 115 or 116 of the Act.

(j) the Representative for Children and Youth or his or her delegate for the purpose of exercising a power or performing a duty under the *Representative for Children and Youth Act*.

5.4 The 2007 OIC extends the RCY’s information access under the *YCJA* to all of the RCY’s functions under the *RCY Act*.

5.5 MCFD keeps records under s. 116(1) of the *YCJA*.

5.6 In response to a request from the RCY for *YCJA* records for the purpose of exercising a power or performing a duty under the *RCY Act*, MCFD agrees to provide *YCJA* records to the RCY in accordance with this Protocol unless MCFD is prohibited by the *YCJA* from disclosing a specific record.

5.7 In relation to all *YCJA* records received by the RCY, the RCY understands that the RCY is governed by the *YCJA* and will comply with the *YCJA* respecting these records.

PART 6 – CONFIDENTIALITY AND SECURITY

- 6.1** RCY confidentiality obligations are set out in section 23 of the *RCY Act* and in Part 3 of *FOIPPA*.
- 6.2** MCFD staff will maintain confidentiality with respect to records created by or for RCY staff. In accordance with section 3(1)(c) of *FIPPA*, such records created by or for the RCY are exempt from access to information requests made under Part 2 of *FIPPA*.
- 6.3** The *CFCSA* director is governed by the *CFCSA*, which modifies *FIPPA*, in terms of disclosure of information obtained under the *CFCSA*. The *CFCSA* director may disclose information provided by or to the RCY pursuant to ss. 64, 74(2)(e) and s. 79 of the *CFCSA*. The *CFCSA* director agrees to consult with the RCY prior to disclosing records created as a result of the RCY's involvement except in respect of records disclosed for court proceedings and information disclosed to individuals who are involved in planning, supporting or providing services to a child or young adult who is receiving or is eligible to receive services under the *CFCSA*.
- 6.4** With respect to youth justice records, the RCY, MCFD, and the *CFCSA* director are aware of the requirements of the *YCJA* with respect to confidentiality and security.

PART 7 – ADVOCACY

7.1 The RCY’s advocacy function ensures the rights, interests, voice and well-being of children and youth receiving designated services are respected and protected in relation to the provision of those services.

7.2 The RCY exercises the advocacy mandate as follows:

- (a) RCY advocacy staff, under s. 8 of the *RCY Act*, have delegated responsibility for the advocacy function.
- (b) The RCY advocacy function ranges from providing information, support and advice to children, youth and their families about how to effectively access designated services and to become effective self-advocates, to providing advocacy directly on behalf of a child or youth.
- (c) The informed consent of children, youth or their guardian is not a requirement in order for RCY advocacy staff to advocate on their behalf. However, as a point of good practice and a demonstration of the principle of child and youth participation in matters that affect them, the RCY does seek the informed consent of children and youth to act on their behalf where possible and appropriate.
- (d) RCY advocacy staff requires information from MCFD or a *CFCSA* director as part of determining whether or not to become involved as the child’s or youth’s advocate and during the time the advocacy file remains open.
- (e) RCY advocacy staff will contact MCFD staff or a *CFCSA* director directly regarding case specific information.
- (f) RCY advocacy staff can be included in case planning meetings and in other types of decision making processes. Advocacy staff can also request on behalf of a child or youth that a meeting be held.

7.3 MCFD staff and *CFCSA* director roles and responsibilities:

- (a) MCFD staff or a *CFCSA* director is responsible for case management and decision-making in the provision of services to children, youth and families in accordance with relevant legislation, policies and standards.
- (b) Under Section 70 of the *CFCSA* children and youth in care must be informed about the RCY and be assisted in making contact with the office. Children in care, which includes any child who is in the care, custody or guardianship of a *CFCSA* director or a director of adoption, must be given this information as soon as possible upon coming into care, each time they come into care and then at least annually or if circumstances arise that make a review necessary in a manner appropriate to their developmental level.
- (c) In accordance with MCFD policy, children and youth who reside in a secure setting must be informed about the RCY and be assisted in making contact with the office if the child or youth wants the contact.
- (d) It is the responsibility of MCFD staff and delegates of a *CFCSA* director to work cooperatively with RCY advocates who are advocating on behalf of children and youth.

- (e) MCFD staff or delegates of a *CFCSA* director contacted by RCY advocacy staff may ask for evidence of delegation and RCY advocacy staff must provide this information.
- (f) MCFD staff or delegates of a *CFCSA* director, in consultation with supervisors, will provide information on a timely basis to the RCY advocates as required and as permitted by the *YCJA*.

7.4 RCY advocacy staff roles and responsibilities:

- (a) RCY advocates support, assist, inform, advise and provide advocacy for children and youth who are experiencing difficulties accessing or receiving designated services under the *RCY Act*. RCY advocates help to ensure their voices are heard, their rights are upheld, their preferences, wishes or desires considered, and their interests are central to decision making about services being provided.
- (b) When an RCY advocate contacts MCFD to gather information and gain perspective on a concern that has been brought to the attention of the RCY, the advocate asks questions and makes requests guided by the appropriate legislation, standards, policies and principles.
- (c) RCY advocacy staff do not have case management or decision making responsibilities; however, it is within the RCY advocacy staff's role to:
 - (i) Challenge or request the reasons for a decision or plan, within the context of practice standards and/or child's rights;
 - (ii) Participate directly in planning processes with and/or on behalf of children and youth to ensure their views are heard and considered and their rights upheld;
 - (iii) Work with families and other advocates where they exist and provide them with support, assistance, information and advice;
 - (iv) Encourage self-advocacy and meaningful participation of children and youth in plans or decisions that affect them;
 - (v) Encourage timeliness in planning and decision making
 - (vi) Request reconsideration of decisions made; and
 - (vii) File formal complaints on behalf of children and youth.

7.5 **Initial contact:** When an RCY advocate makes initial contact seeking case specific information about a child or youth from MCFD staff or delegates of a *CFCSA* director for the purpose of understanding the situation and making a meaningful determination as to the proper nature and extent of advocacy role in the particular case, the following apply:

- (a) The RCY advocate will normally initiate contact with the relevant MCFD staff member or delegate of a *CFCSA* director and supervisor via email and request information sufficient to help the advocate understand the situation and assess the file for advocacy purposes.
- (b) The MCFD staff or delegate of a *CFCSA* director who is responsible to address the RCY request, will contact the RCY advocate within two business days to confirm receipt and advise when the information will be provided.

- (c) MCFD staff or delegate of a *CFCSA* director will provide the information and any descriptions or copies of file records that MCFD believes would assist advocacy staff to understand and assess the matter.
- (d) If MCFD staff or delegate of a *CFCSA* director is unable to provide the information within five business days from the date of receipt, MCFD staff must inform the RCY advocate prior to the expiry of that time with reasons for the delay and the expected date of provision of the information.

7.6 Client File Record Requests: When an RCY advocate concludes that client file records (or additional file records beyond those initially provided) are necessary in order to carry out the advocacy function in a particular case, the following apply:

- (a) RCY advocate will provide MCFD or a *CFCSA* director with a signed letter, citing section 10 of the *RCY Act*, and describing the records sought and the purpose for which they will be used.
- (b) In accordance with Part 3.3 of this Protocol, MCFD or a *CFCSA* director will make efforts to provide the requested records within 5 working days unless MCFD notifies the requester in writing prior to the expiry of that time with the reason for the delay and the expected date the records will be received.

7.7 Dispute resolution: When there is a dispute, it is preferable to resolve issues at the local level; however, if a dispute requires escalation, it occurs in the following order:

1. RCY advocate and MCFD manager
2. RCY manager and MCFD executive director
3. RCY Executive Director of Advocacy and MCFD Deputy Director of Child Welfare

This section does not limit the RCY's ability, such as for reasons of urgency or where dispute resolution has not resolved the issue, to seek a judicial remedy to enforce the RCY's right to information.

PART 8 – MONITORING AND SPECIAL REPORTS

- 8.1** The RCY monitors, reviews, audits and conducts research on the provision of designated services for the purpose of making recommendations to improve the effectiveness and responsiveness of those services.
- 8.2 Information Requests:** When RCY staff requires information from MCFD or a *CFCSA* director for the purpose of exercising the monitoring function:
- (a) If records are required, provide MCFD Interface with a request in writing citing section 10 of the *RCY Act* and describing the records sought, the purpose for which they will be used.
 - (b) In accordance with Part 3.3 of this Protocol, MCFD Interface will make efforts to provide the requested information within 10 working days unless MCFD Interface notifies the requester in writing prior to the expiry of that time with the reason for the delay and the expected date the information will be provided.
 - (c) When requesting a meeting with MCFD staff, RCY staff will provide MCFD Interface with an email describing the purpose of the meeting.
- 8.3 Client File Record Requests:** When RCY staff requires client file records:
- (a) RCY staff will request the information in writing to MCFD Disclosure and Document Management citing section 10 of the *RCY Act*, describing the information sought and the purpose for which it will be used.
 - (b) In accordance with Part 3.3 of this Protocol, MCFD Disclosure and Document Management will make efforts to provide the requested records within 45 working days unless MCFD Disclosure and Document Management notifies the requester in writing prior to the expiry of that time with the reason for the delay and the expected date the records will be provided.
- 8.4 Notice Prior to Publication:** When the RCY intends to produce a report and recommendations as a result of information obtained from MCFD, prior to making the report public, the RCY will:
- (a) Initiate a meeting with the *CFCSA* director to discuss the upcoming report and recommendations.
 - (b) Provide an embargoed draft copy of the report and recommendations to MCFD for administrative fairness review. The timeline for the administrative fairness review is 10 working days.
 - (c) Provide an embargoed copy of the final report and recommendations to MCFD at least one working day in advance of the release of the report.
- 8.5 Joint RCY/MCFD Research Projects:** By mutual consent, RCY and MCFD may collaborate on joint projects that may result in special reports to improve the effectiveness and responsiveness of designated services to children, youth and families.

PART 9 – CRITICAL INJURIES AND DEATHS

- 9.1** In the tragic event that a child or youth who is receiving reviewable services, or who was receiving reviewable services within a year previous, from MCFD dies or suffers a critical injury, the RCY may investigate and report on the critical injury or death as set out in Part 4 of the RCY Act. The ultimate purpose of the investigation and report and is to help inform improvements to services to help prevent similar injuries and deaths in the future.
- 9.2 Reporting of Critical Injuries and Deaths:** MCFD sends reports to the RCY of critical injuries and deaths of children when the child or the child's family was receiving a reviewable service at the time of the critical injury or death or in the year previous to the critical injury or death under the following conditions:
- (a) The reviewable service is one for which MCFD is responsible, and
 - (b) MCFD is aware of the critical injury or death.
- 9.3 Review by RCY:** In accordance with section 11(3) of the *RCY Act*, RCY may conduct a review for the following purposes:
- (a) to determine whether to investigate a critical injury or death under Section 12
 - (b) to identify and analyze recurring circumstances or trends
 - (i) to improve effectiveness and responsiveness of the reviewable service, or
 - (ii) to inform improvements to broader public policy initiatives.
- 9.4 Jurisdiction of RCY to Investigate:** Section 13 of the *RCY Act* sets out the following limitations on a potential RCY investigation if a criminal investigation, coroner's investigation or public body or director's investigation is underway with respect to a critical injury or death of a child:
- 13 Despite section 12, this Act does not authorize the representative to investigate the critical injury or death of a child:
- (a) until the completion of a criminal investigation and criminal court proceedings respecting the critical injury or death of the child;
 - (b) if a coroner investigates the death of the child, until the earlier of:
 - (i) the date on which a coroner has
 - (A) reported to the chief coroner under section 15 or 1 of the *Coroners Act*, and
 - (B) the chief coroner indicates to the coroner, under section 44(1)(b) of the *Coroners Act*, that the chief coroner has no further directions in respect of the death.

(ii) the date on which a coroner sends, under section 22(2) of the Coroners Act, notice of an inquest to a sheriff, directing the sheriff to summon a jury for that purpose, and

(iii) one year after the death, and

(c) if a public body, or a director, responsible for the provision of a reviewable service has, at the time of the critical injury or death of the child, written procedures in place for investigating critical injuries or deaths and the public body or director investigates the critical injury or death of the child, until the earliest of:

(i) the completion of the investigation,

(ii) one year after the critical injury or death of the child, and

(iii) the date the public body or director provides the representative with a written consent to investigate the critical injury or death of the child.

9.5 Notification of Decision to Investigate: In accordance with section 12(4) of the *RCY Act*, the RCY will notify the *CFCSA* director in writing as soon as possible when a decision is made to investigate a critical injury or death under Part 4.

9.6 Interviews with MCFD Staff: RCY staff will provide notice to the *CFCSA* director of a request to interview MCFD staff or delegates of a *CFCSA* director for the purpose of an investigation. In issuing such notice, the RCY will recognize that the *CFCSA* director requires a reasonable period of time to provide support to the MCFD staff or delegates of a *CFCSA* director to be interviewed and to enable the MCFD staff or delegates of a *CFCSA* director to prepare for the interview.

9.7 Information Requests: When RCY staff requires information from MCFD or a *CFCSA* director for the purpose of a review or investigation under Part 4:

(a) If records are required, RCY staff will provide MCFD Interface with the request in writing citing section 10 of the *RCY Act* and describing the records sought, and the purpose for which they will be used.

(b) In accordance with Part 3.3 of this Protocol, MCFD Interface will make efforts to provide the requested information within 10 working days unless MCFD Interface notifies the requester in writing prior to the expiry of that time with the reason for the delay and the expected date the information will be provided.

(c) When requesting a meeting with MCFD staff or delegates of a *CFCSA* director, RCY staff will provide MCFD Interface with an email describing the purpose of the meeting.

9.8 Client File Record Requests: When RCY staff requires client file records for the purpose of a review or investigation:

- (a) RCY staff will request the information in writing to MCFD Disclosure and Document Management citing section 10 of the *RCY Act*, describing the information sought and the purpose for which it will be used.
- (b) In accordance with Part 3.3 of this Protocol, MCFD Disclosure and Document Management will make efforts to provide the requested records within 45 working days unless MCFD Disclosure and Document Management notifies the requester in writing prior to the expiry of that time with the reason for the delay and the expected date the records will be provided.

9.9 This Protocol is without prejudice to the RCY's right to issue an order requiring a person to attend or produce documents under section 14.1 of the *RCY Act* in a child death or critical injury investigation under Part 4 of the *RCY Act*.

9.10 Notice Prior to Publication: When the RCY intends to produce a report and recommendations as a result of information obtained from MCFD or a *CFCSA* director, prior to making the report public, the RCY will:

- (a) Initiate a meeting with the *CFCSA* director to discuss the upcoming report and recommendations.
- (b) Provide an embargoed draft copy of the report and recommendations to MCFD for administrative fairness review. The timeline for the administrative fairness review is 10 working days.
- (c) Provide an embargoed copy of the final report and recommendations to MCFD at least one working day in advance of the release of the report.

IN WITNESS WHEREOF the parties have executed this Protocol on the dates indicated below.

SIGNED in British Columbia



Stephanie Cadieux
Honourable Minister
Ministry of Children and Family Development

April 7, 2017

Date



Corinna Heavener
Provincial Director of Child Welfare

April 10, 2017

Date



Bernard Richard
Representative for Children and Youth

April 10, 2017

Date