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Investigation Report:
“Emilie”

Office of the Provincial Advocate for Children and Youth
April 2019
1. INTRODUCTION

THE REQUEST FOR INVESTIGATION

This investigation was initiated at the request of a father who wanted to ensure that the needs of his daughter, “Emilie” were being properly addressed while she was living in the care of a children’s aid society. At the time he contacted the Office of the Provincial Advocate for Children and Youth (“Advocate’s Office”), Emilie’s father had not had regular access visits with Emilie for a number of years — mainly, he explained, due to his distrust of the workers at the children’s aid society (“CAS”). However, because he had lived in the care system as a child and believed he had been harmed by it, he wanted an outside body to look into the care his daughter was receiving.

2. MANDATE AND AUTHORITY OF THE ADVOCATE’S OFFICE

JURISDICTION TO INVESTIGATE

Under the Provincial Advocate for Children and Youth Act, 2007,¹ any person is entitled to request an investigation into the services provided by a children’s aid society to a child or group of children. However, the same legislation prevents the Advocate’s Office from initiating an investigation until the complainant has completed one of the processes for making a complaint about a children’s aid society specified in the Child and Family Services Act² — the legislation in force at the time the investigation was requested.

In this case, Emilie’s father filed a complaint with the local children’s aid society (“CAS”) on April 6, 2017 and later met with members of the society’s Internal Complaint Review Panel. According to a letter the CAS sent to Emilie’s father, his primary concerns were understood by the CAS to be: “…you need to know that ["Emilie"] is receiving all of the supports she needs from qualified medical professionals. In your view, it is critical that [Emilie’s] caregivers and family understand the underlying reasons for some of her ongoing behavioural difficulties”.

The CAS provided formal written responses to Emilie’s father on May 11, 2017 and again on June 1, 2017. In their first letter, the CAS provided an overview of the services provided to Emilie, but Emilie’s father was not satisfied with the content of this response. With the consent of Emilie, the CAS then provided further information to her father (in writing) but was unwilling to provide the names of the outside professionals involved her case. After completing the CAS complaints process, Emilie’s father contacted the Investigations Unit of the Advocate’s Office.

In speaking with Emilie’s father, Investigators confirmed that the reason he was asking for an investigation by the Advocate’s Office was generally consistent with how the

children’s aid society described his complaint: he wanted to ensure that Emilie was receiving the support she needed from qualified professionals. Prior to initiating the investigation, Investigators advised Emilie’s father that the investigation report would not include the names of any of the individuals providing services to Emilie.

ABOUT THE ADVOCATE’S OFFICE

The Office of the Provincial Advocate for Children and Youth is an independent office of the Legislative Assembly of Ontario with the legal authority to advocate for children and youth.

The purpose and function of the office, as explained in *The Provincial Advocate for Children and Youth Act, 2007* is to:³

- Provide an independent voice for children and youth, including First Nations children and youth and children with special needs, by partnering with them to bring issues forward;
- Encourage communication and understanding between children and their families and those who provide them with services;
- Educate children, youth and their caregivers regarding the rights of children and youth; and
- Conduct investigations and make recommendations to improve children’s aid society services and services provided by residential licensees where a children’s aid society is the placing agency.

INVESTIGATIVE POWERS

Investigators from the Advocate’s Office (or “Investigative Unit”) have the power to:⁴

- Hear or obtain information from anyone the Provincial Advocate thinks may be relevant to the investigation and make inquiries the Provincial Advocate thinks may be relevant to the investigation;
- Compel information and the production of documents from anyone who is able to give information relating to any matter being investigated by the Provincial Advocate, including at MCYS, a children’s aid society, or a residential licensee;
- Summon for an examination under oath anyone who in the Provincial Advocate’s opinion, is able to give any information relevant to the investigation, including individuals at MCYS, a children’s aid society, or a residential licensee; and
- Obtain information that would ordinarily be subject to various privacy Acts.

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LEGISLATIVE REQUIREMENTS: PRIVACY, FAIRNESS AND THE RIGHT TO RESPOND

Under the Provincial Advocate for Children and Youth Act, 2007, investigations undertaken by the Advocate’s Office are focused on making recommendations to improve the children’s services system.\(^5\)

Each time an investigation is completed, the Provincial Advocate is required by legislation to create a public report which must explain the reasons for the investigation and include any recommendations that the Provincial Advocate considers appropriate to improve services for the children and youth within the mandate of the Provincial Advocate for Children and Youth Act, 2007.

The Act contains specific privacy provisions that prevent the disclosure of the name or other identifying information in a public report. In addition to protecting the privacy of young people, the Advocate’s Office is not permitted to reveal the name or identifying information of any adult in a public report, unless the adult consent to being identified. Therefore, in this report various individuals are identified by a generic title (such as “CAS worker”) and “Emilie” is not the real name of the young person who is the subject of this report. The Advocate’s Office also carefully considers the impact of including sensitive information in a public report and does so only when it is necessary to advance the overall objective of making recommendations to improve services for the children and youth in its mandate.

Any organization or individual who will be the subject of recommendations from the Advocate’s Office must be made aware of these recommendations before the public report is released and be provided with the opportunity to respond in a manner that is consistent with s.16.1(3) of Provincial Advocate for Children and Youth Act, 2007.

3. THE YOUNG PERSON AT THE CENTRE OF THE INVESTIGATION

The young girl at the centre of this investigation, identified as “Emilie” in this report, is now 16 years of age. She was admitted into the care of a children’s aid society in early 2014 and has been a Crown Ward since 2016. This means that the children’s aid society has the legal responsibility to act as Emilie’s parent until Emilie becomes an adult at the age of 18 (when Crown Wardship automatically terminates)\(^6\) or a judge makes a different decision about who is responsible for Emilie’s care.\(^7\) (The term “Crown Ward” was replaced with “extended society care”\(^8\) on April 30, 2018, when the Child and Family Services Act was repealed and new legislation known as the Child, Youth and Family Services Act, 2017, came into force).

\(^5\) Provincial Advocate for Children and Youth Act, 2007, SO 2007, c 9, s 1(d).
\(^6\) Child and Family Services Act, R.S.O. 1990, c C11 s 71.
\(^7\) Child and Family Services Act, R.S.O. 1990, c C11 s 65.2.
\(^8\) Child, Youth and Family Services Act, 2017, SO 2017, c 14 s 101 (1) 3.
In this case, the concerns of Emilie’s father were based on documents the CAS provided to a court. He told Investigators that he had not been aware of some of the things that were going on in Emilie’s home or the problems Emilie was having because he had not seen Emilie very much even before the children’s aid society brought her into their care.

Despite the fact that his relationship with Emilie was somewhat distant and he had little direct knowledge about her situation, her father’s concerns were not unreasonable. When Investigators from the Advocate’s Office reviewed what is known as a “Protection Application” — the official name of the documents the children’s aid society provided to the court — they agreed with Emilie’s father that the concerns described in it were serious. The court documents indicated Emilie was having problems in school, at home, and with her health.

People identified in the Protection Applications as having concerns about Emilie’s well-being included school officials, medical doctors, her family members, and the police. It is also true that negative outcomes have been reported for some young people who have lived in the care of a children’s aid society. For example, some studies have found a link between previous involvement with the child welfare system and homelessness; and other studies, both in Ontario and other provinces, have found that less than 50% of children in the care system graduate from high school.

However, while there may be a public interest in confirming that a young person in the care of the state has received services appropriate to meet her needs, the Advocate’s Office has the discretion to decline to open an investigation if the young person who is the subject matter of the investigation or is in some way affected by the investigation, indicates that he/or she does not want the investigation to take place.

Emilie also has legal rights that must be considered. She has the right to have her views and wishes taken into account by the children’s aid society when significant decisions about her care are made, as well as rights under the Health Care Consent Act to refuse or consent to treatment. Depending on her choices, Emilie’s exercise of her rights may have had an impact on whether services recommended by professionals

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were actually delivered to her, and also bear consideration in determining whether services, either recommended or ultimately delivered, were appropriate.

Representatives from the children’s aid society were highly supportive of Investigators speaking to Emilie directly, and it was determined that Emilie’s CAS worker would convey the following message to her:

Your Dad contacted the Child Advocate’s Office. He wanted them to look into whether you were getting all of the supports and help you should be getting while you are in care.

[Investigators] from the Advocate’s Office would like to come to meet and talk to you about this.

You don’t have to meet with them if you don’t want to. But they think it’s important to hear from you directly about how things are going.

If you have any questions that will help you decide whether you want to meet with them or not, you can ask me [name of child protection worker] to pass them on or I can ask [the Investigators] to call you.

Emilie was agreeable to meeting with Investigators, who met with her on two occasions before completing the investigation. During the first meeting, Investigators discussed her father’s request for the investigation, whether or not Emilie wanted any involvement in the investigation, and the plan to limit the scope of the investigation unless Emilie herself identified issues to be looked into further. In the second meeting, Investigators reviewed their “findings” with her and asked Emilie’s opinion as to whether she felt the information obtained by Investigators was accurate and whether she believed that their conclusions were correct. In both meetings, Investigators also described Emilie’s right to the assistance of an advocate from the Advocate’s Office while she was living in the care of, or receiving services from, the children’s aid society.

In her meetings with Investigators, Emilie herself raised no concerns about her care.

THE AGENCIES INVOLVED IN THIS INVESTIGATION

At the time that the Advocate’s Office received the request for an investigation, the children’s aid society in question was one of the 48 children’s aid and Indigenous children’s aid societies across Ontario that provides such services to children, youth and their families.14

14 There were 48 children’s aid and Indigenous child children’s aid societies in Ontario at the time of writing this report. For a current list of these societies, see the First Nations Child and Family Services at: <https://fncaingsociety.com/child-and-family-service-agencies-canada> and the Ontario Association of Children’s Aid Societies at: <http://www.oacas.org/childrens-aid-child-protection/locate-a-childrens-aid-society/>. Both Associations provide a list of societies.
services: (a) investigate allegations or evidence that children may be in need of protection; (b) protect children where necessary; (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children; (d) provide care for children assigned or committed to its care; (e) supervise children assigned to its supervision; (f) place children for adoption; (g) other duties assigned by legislation or regulations.\textsuperscript{15}

For reasons specific to this particular case, the Advocate’s Office has made the decision not to identify the CAS in order to protect the identity of the young person who is the subject of this investigation.

4. ISSUES UNDER INVESTIGATION

INVESTIGATIVE SCOPE

The scope of the investigation relates to whether or not Emilie received services appropriate to her needs while in the care of the CAS.

Much of her father’s information about Emilie’s medical and emotional well-being was known to him based on the information contained in the legal documents filed by the CAS.

Therefore, the investigation undertaken by the Ontario Child Advocate’s Office centred on the following issues:

1. What information was known/available to the CAS about Emilie’s needs?
2. Has the CAS provided services to meet Emilie’s needs?

APPROACH

The Advocate’s Office obtained Emilie’s CAS file and information provided to the court by the CAS. Due to her father’s concern that CAS employees would not be truthful during the investigation, particular emphasis was placed on the contents of reports from third parties and other professionals not employed by the CAS who provided services to Emilie.

After reviewing all of the documents, Investigators met with Emilie on two occasions during the course of the investigation (April 2018 and September 2018), and spoke with one of her foster parents as well as her assigned social worker from the CAS in order to determine whether the services described in the records were actually provided to Emilie.

\textsuperscript{15} See \textit{Child and Family Services Act} RSO 1990 c C11 s 15(3) and \textit{Child, Youth and Family Services Act, 2017}, SO 2017, c 14 s 35(1).
5. INFORMATION KNOWN/AVAILABLE TO THE SOCIETY

INFORMATION OBTAINED FROM COURT DOCUMENTS

The Advocate’s Office obtained a number of documents submitted to the court by the children’s aid society. The purpose of gathering this information was to better understand the types of concerns about Emilie’s physical and emotional well-being that were known to the CAS at the time she was brought into care. Investigators made a list of the types of concerns that were identified in these documents:

- Harmful behaviours towards herself and others at home, including damage to property and actions that could be considered to be assault;
- Several admissions to a hospital psychiatric unit within a short period of time;
- Difficulty completing academic work; problems with school attendance; physical aggression towards peers and teachers; suspensions from school;
- Behaviours that caused her father, when he learned of them, to be worried that she might have been sexually victimized.

OTHER INFORMATION IN THE POSSESSION OF THE CHILDREN’S AID SOCIETY

The Advocate’s Office also obtained information and correspondence between the CAS and third party professionals or other “collateral” sources including: school reports, social service agency reports, hospital/mental health/ educational assessments, plan of care reports, medical reports, and reports about Emilie while she was in the care of the children’s aid society.

Although each document was reviewed by Investigators, very little detail from these documents has been included in this report. This was done intentionally, in order to protect Emilie’s privacy.

6. DID THE CHILDREN’S AID SOCIETY PROVIDE SERVICES TO MEET THE NEEDS OF THE CHILD?

HOME-LIFE WHILE IN CARE

The Advocate’s Office reviewed two types of reports about Emilie’s home-life while in care: those created by the people providing the care, and reports created by staff of the CAS. Emilie also provided information about her home life.

A document known as a “Plan of Care” report is an assessment of a young person that is completed by a children’s aid society. This report is required by a regulation to the Child, Youth and Family Services Act, 2017 and it must contain information relevant to the immediate care of a young person, identify if that young person has any special
needs that must be addressed, and describe how care is to be provided to that young person on an on-going basis.\(^\text{16}\)

The first Plan of Care document reviewed by Investigators was created in March 2014 and depicted Emilie as a child who “settled in quickly”; “displayed no behaviours”; “[was]getting along fine”; and “[had]no issues with others in the community”. The Plan of Care also indicated that Emilie had been enrolled in school, was having access visits with her immediate family and attended a day camp during the March Break. According to the plan, her foster parents intended to identify potential after school activities. It was noted that “there have been absolutely [no] behavior issues since placement” either at home, school, in camp, or in the community. Additionally, since her admission into care, Emilie had not needed to use the medication for aggression that had been previously prescribed for her and that she used while living in her family’s home.

Subsequent plan of care reports confirmed that Emilie continued to do well. Over the time period reviewed by Investigators (2014–2018), there were no reports of self-harm, physical aggression towards foster family members, emergency hospitalizations, or calls to police due to aggressive behaviours.

**EDUCATION**

Investigators reviewed Emilie’s reports from school. Her end of year report card in June 2014 (the first school semester during which she was in the care of the children’s aid society) indicated that she followed the rules and met expectations at school, demonstrated perseverance in completing her school work on a daily basis, and was never late or absent from class. Report cards over the next three years contained similar themes: steady academic progress, compliance with rules and routines, cooperative relationships with others, and excellent attendance. Significantly, it was also regularly reported that Emilie enjoyed school.

A letter from Emilie’s high school dated March 23, 2018 provided a summary of Emilie’s progress at the school and the supports provided by the school. It was noted that Emilie had 13 credits (which, according to the school, was one credit “ahead” of her peers) and received indirect support from a number of professionals (Learning Resource Teacher, Student Success Teacher, Student Support Partner, Guidance Counsellor and Special Services Counsellor, and a Speech Language Pathologist). The school reported an Educational Assistant was attached to each of her academic classes and that Emilie received 1:1 Educational Assistant Support with homework, organization, and social skills. The letter indicated that the school team, foster parents and CAS meet every six weeks and that Emilie was involved in two extracurricular activities at school. As well, it was noted that Emilie was working towards completing the 40 volunteer hours required in order to graduate with a high school diploma. The school also confirmed in writing that Emilie had received the assistive technology resources (eg laptop, speech to text and word prediction software) that had been recommended by the Speech Language Pathologist referred to below.

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\(^{16}\) O. Reg. 156/18 s 127 (2),(3).
ASSESSMENTS

Prior to coming into care, Emilie was the subject of two psycho-educational assessments with conflicting results. The first assessment was conducted in 2011 when Emilie was 8 and the second in 2014 when she was 11. The conflicting diagnoses presented a challenge in terms of identifying and accessing appropriate supports for Emilie. In 2016, the CAS arranged for a third assessment. The results of this assessment were consistent with the first assessment which was later corroborated by the assessment of a Speech Pathologist arranged through her school.

The 2016 psycho-educational assessment also recommended that Emilie undergo an MRI scan in order to rule out any possibility she had sustained a brain injury as the result of an incident when she hit her head as a toddler or her involvement in a car accident at age 10. Investigators reviewed medical documentation confirming that the CAS had arranged for an MRI to be completed in October 2016 and the results were found to be “clear”.

HEALTH AND WELL-BEING

As described earlier, when reading the child protection application filed in court by the CAS, Emilie’s father became concerned that some of behavior exhibited by Emilie may have been the result of past victimization. The possibility of previous abuse was also raised by the author of the 2016 Educational Assessment and this assessment recommended that Emilie be referred to a therapist to explore the possibility that she had been exposed to earlier trauma.

According to the child protection files, the CAS made arrangements for Emilie to see to a clinician with whom she has been meeting regularly since March 2017. Investigators have independently confirmed that the clinician is a member of a regulated health profession, authorized to practice in Ontario, and provide clinical services to children, adolescents and families. A letter dated August 15, 2017 from the clinician confirmed Emilie’s regular attendance for appointments, that Emilie was an “active participant” in the sessions, and that the clinician is aware that the possibility of past abuse is one, but not the only reason, for the referral. The letter describes Emilie as “a pleasure to work with,” and Emilie herself told Investigators in 2018 that she met with the clinician regularly, liked that person, and could talk to that person “about anything”. Emilie was aware that some people, including her father, were concerned that she had may have been victimized in the past, and advised Investigators that this was a subject she would feel comfortable talking to her therapist about if she felt she wanted or needed to do so.

ANALYSIS

Because of his distrust of the CAS, Emilie’s father was not in regular contact with Emilie, and he had no independent knowledge of how Emilie was doing. However, based on what he had read in the documents the CAS provided to the court, her father wondered whether Emilie should have been admitted for in-patient hospitalization at a mental health unit for a significant period of time. He was pretty certain that this had not occurred.
After reviewing documentation that included reports from the CAS, the foster home, school, clinicians, and medical professionals, Investigators met privately with Emilie and also spoke with her foster father and social worker. There is no information to suggest Emilie required, or would have benefitted from, in-patient hospitalization at a psychiatric unit once she was admitted into the care of the CAS.

The criteria for emergency admission to what is known as “secure treatment” under both the Child and Family Services Act\textsuperscript{17}, and its successor legislation the Child, Youth and Family Services Act, 2017\textsuperscript{18} relate to acts or threats of serious bodily harm either to oneself or another person. These criteria can be summarized as follows:

- The young person has a mental disorder;
- As a result of the mental disorder, the young person has caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person;
- Effective treatment is available at the place providing secure treatment;
- No less restrictive alternative for providing treatment is available.

Similarly, the criteria for involuntary admission to a psychiatric facility under the Mental Health Act involves consideration of the likelihood that a patient or someone else may suffer serious bodily harm as a result of the patient’s mental health disorder.\textsuperscript{19} Nothing in the information obtained about Emilie - while she has been in care- suggests she would meet these criteria. There are no reports of Emilie harming herself, displaying aggressive behavior towards other people, damaging property, or being involved in incidents requiring the intervention of any third party, including the police.

By all accounts, Emilie settled well into her foster home, and has made steady academic progress in school. She also regularly meets with a professional counsellor, who is qualified to work with children, adolescents, and families, and who is liked and trusted by Emilie. Investigators have come across no information or evidence to suggest that Emilie requires “treatment” beyond the level of care she is currently receiving.

One area that was not addressed in this investigation is the degree to which the CAS has helped prepare Emilie to make the transition from a “child in care” to a young adult. While this is an important issue from the perspective of the Advocate’s Office, it was not something that Emilie wanted Investigators to pursue. Nor was this an issue identified by her father when he requested the investigation.

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\textsuperscript{17} Child and Family Services Act, RSO 1990, c C11 s 124(2).
\textsuperscript{18} Child, Youth and Family Services Act, 2017 SO 2017, c 14 s 171(2).
\textsuperscript{19} Mental Health Act, RSO 1990, c M.7 s 20(5).
7. CONCLUSION

Emilie is a young woman, 16 years of age, who was brought into the care of a CAS in 2014 and is now a Crown Ward. Her father contacted the Advocate’s Office to request an investigation into whether the CAS was providing an appropriate level of care to his daughter. Specifically, her father believed Emilie should have received long term treatment at a hospital. The basis for his concerns can be found in documents the CAS provided to the court, but are also supported by other documentation such as school reports and medical records that predate her admission into care.

Investigators from the Advocate’s Office carefully reviewed all of the documents in Emilie’s CAS file, as well as the documents that had been filed with the court. Investigators also met with Emilie and her foster father, and spoke with her CAS worker.

After reviewing all of the available information, Investigators noted that the types of behaviours that had caused people to be concerned about Emilie before she came into care (“unprovoked anger”, physical and verbal aggression) have not been observed during the four years that Emilie has been in the care of the CAS. As a result, there is no reason to suggest that in-patient treatment at a hospital or other mental health facility would be appropriate for Emilie.

By all accounts, Emilie is doing well in care. She settled quickly into her foster home and has made steady academic progress. She receives supports in school which match what has been recommended in her most recent educational assessment and by a Speech Language Pathologist. Furthermore, she attends counselling on a regular basis with a clinician who has recognized expertise in working with adolescents, children and families. Emilie herself has no concerns about her care.

This file is closed with no recommendations made to the children’s aid society nor the Ministry of Children, Community and Social Services.