



In the Matter of E.J.H. and K.G.H.

Administrative Fairness Investigation Report

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Letter of Transmittal

December 12, 2012

The Honourable Dan D'Autremont
Speaker of the Legislative Assembly
Legislative Building
2405 Legislative Drive
Regina SK S4S 0B3

Dear Mr. Speaker:

In accordance with *The Advocate for Children and Youth Act*, it is my honour and privilege to submit to you, and to the members of the Legislative Assembly, a report on our administrative fairness investigation into the matter of E.J.H. and K.G.H.

Respectfully,



Bob Pringle
Advocate for Children and Youth
Province of Saskatchewan

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Acknowledgments

Thank you to all of the staff of the Advocate for Children and Youth, and those who have contributed to this special report including staff and managers of provincial government ministries, agencies and publicly-funded health entities. UNICEF Canada has kindly permitted use of their child-friendly version of the United Nations *Convention on the Rights of the Child* (for more information on the Convention, please visit <http://www.unicef.org/crc/>). Special thanks to the family for their openness and assistance in examining their case.

From the Advocate

When members of the media first contacted my office in early November 2011 for comment regarding the online publication of Court of Queen's Bench Judge Geoffrey Dufour's decision in a child welfare case, I was initially surprised that such a private matter would be made so public.

Upon reviewing Judge Dufour's decision and learning more about the circumstances and issues, I then understood why he was concerned. I had many questions and referred the matter to my Investigations Team for assessment. We determined the most appropriate action was to proceed with an administrative fairness investigation on behalf of the children.

Separating a child from his or her family is the most difficult decision anyone can make. The effects of separation are life long, and the risk of making the wrong decision weighs heavily on everyone involved. Working in child welfare is challenging, with limited resources, multiple demands and emotionally charged situations.

In this case, many of the decisions followed legislation and policy, and appropriate supports were extended to help reunify the family. However, family services were withdrawn once the decision was made to make the children permanent wards, which appears to have led to poor communication, unchecked assumptions, and non-compliance with policy. After a lengthy court process, Judge Dufour returned the children to the care of this well-intentioned and loving, yet continually struggling mother.

The Ministry of Social Services has embarked on a process of transformation in child welfare. I would like to acknowledge that some changes have occurred, but much more needs to be done. This case is a reminder that meaningful change requires commitment, resources and persistence by all concerned.



1 Introduction to Fairness

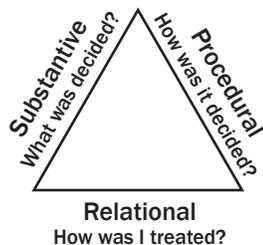
When it comes to explaining what “fairness” is, there is no better expert in Saskatchewan than our fellow independent officer of the Legislative Assembly: the Ombudsman.

It is natural for us to follow that office’s lead in doing administrative fairness investigations because the Advocate for Children and Youth was originally founded in 1994 as a form of Ombudsman for young people. In fact, up until September 1, 2012, we shared the same legislation, *The Ombudsman and Children’s Advocate Act*, which granted the powers of investigation that both independent officers exercise today.

In workshops about fair practices they deliver to public servants throughout the provincial government, Ombudsman Saskatchewan describes fairness like this:

Fairness is not always simple and it does not always mean that everyone gets the exact same thing. There are many situations, relationships and events that come into play. Sometimes generally accepted principles of fairness will apply; sometimes the law will apply.

The Ombudsman refers to three aspects of fairness:



In this special report, we will refer to and explain more about the substantive, procedural and relational sides of the fairness triangle or “lens” that the Advocate for Children and Youth also uses during our administrative fairness investigations.

2 About the Investigation

The Advocate is mandated to examine services to children and youth in accordance with existing policy legislation and in the context of their rights and entitlements.

In this instance, an examination of services provided to the children is inextricably linked to services received by their caregiver. The United Nations *Convention on the Rights of the Child* recognizes parents as primary caregivers, and therefore, deserve respect and support as they aid children to realize their rights as citizens.

Rights are not just provided for, but rely on the participation of those concerned. Ultimately, very few areas of government policy do not affect children in some way; when policies and services are applied unfairly, children may be negatively impacted and their rights may go unrecognized.

While the option is always present, the Advocate for Children and Youth rarely conducts “administrative fairness” investigations. Usually, concerns that come to our attention about the fair treatment and decision-making involving a child or youth receiving services from a provincial ministry or agency are resolved through our regional advocacy services. As we assist children and youth in addressing their concerns, we prefer to use the tools of coaching, mediation and negotiation instead of deciding to formally investigate.

In this particular case, the Advocate did not have knowledge of concerns or know of the children prior to the public release of Judge Dufour’s decision and the ensuing media attention it garnered. This is not unusual as we do not have jurisdiction over matters before or decisions of the court; and, we typically do not have involvement in a case unless we get a call or referral about a concern.

However, once we reviewed the court judgment, made some inquiries with the Ministry of Social Services, and completed an initial assessment of the issues, the Advocate had several concerns about the decisions made and services provided by the Ministry to the two children.

The Advocate chose to initiate an administrative fairness investigation on their behalf and also committed to issuing a special report about the findings and recommendations due to the potentially systemic nature of the issues and the public interest in the case.

On January 31, 2012, the Advocate notified the Ministry of Social Services of the decision to investigate pursuant to Section 20(1) of *The Ombudsman and Children’s Advocate Act*.¹

The ensuing investigation consisted of a review of files obtained from the Ministry of Social Services, and other relevant documents including: *Queen’s Bench Prince Albert, Family Law Division, In the Matter of E.J.H., born [birth date], 2006, K.G.H., born [birth date], 2007, Judgment October 26, 2011*; and, *Supplementary Reasons February 8, 2012*, to the October judgment.²

Interviews were conducted with the mother, Ministry of Social Services child protection workers and their supervisor, and health care professionals with involvement in the case. Although we would have liked to have spoken to the children, in this case, the Advocate determined that this was not in their best interest.

1 On September 1, 2012, *The Advocate for Children and Youth Act* became law. This Act replaces and grants the same powers and duties of investigation as *The Ombudsman and Children’s Advocate Act*.

2 Judge Dufour’s decision in this case is available online at <http://canlii.ca/en/sk/skqb/doc/2011/2011skqb404/2011skqb404.html>.

3 About the Family

Judge Dufour's published decision refers to the mother simply as A.H. For the purpose of this report and to preserve her and her children's privacy, we will not use her real name either. Instead, we will call her Alice. She is a petite First Nations woman, now in her mid 20s, whose journey through a childhood in and out of state care, adolescence on the street, adulthood battling addictions and then contact with human service systems and the courts as an adult is tragic, yet all too common in child welfare.

According to the court record and confirmed in the case files and materials reviewed by our Investigator, Alice's childhood in her hometown of Prince Albert was,

"...marred by neglect and worse at the hands of parents who were unable or unwilling to care for her properly. She quit school in grade five...[she] was pretty much on her own by the time she was 14, exchanging her body for alcohol and bouncing between extended family members, temporary foster parents and state-run facilities."³

In her early adolescence, Alice was addicted to alcohol. She stopped misusing alcohol at age 15 and began using opiates. In 2005, she was placed on Methadone to treat her opioid dependency. In 2009, Alice advised her Child Protection Worker that she started taking Ritalin at 12 years old and began injecting it two years later.

In 2006, Alice gave birth at the age of 21 to a boy E.J. H., who we will call Eric. Her baby girl K.G.H., who we will call Katie, was born in 2007. Both children were apprehended by the Ministry of Social Services at birth, though Alice stayed with her children while they were in hospital and visited them weekly while they were in care.

Alice told our Investigator that when Eric was apprehended, she felt empty and the experience drove her deeper into drugs. Over the next two years, efforts to engage Alice in addictions treatment and counseling to deal with her own childhood trauma had limited success. The Ministry sought permanent wardship of Eric and Katie in 2008.

As described by Judge Dufour, the start of these court proceedings caused Alice to reflect long and hard at her and her children's lives.

"She candidly acknowledged that it was not in her children's best interests to be put into her care at that time. She testified that she did not initially take her children's apprehension seriously and expected that someone would 'bail her out'. It was only now, she testified, that she realized that no one was going to come to her aid and that she would never have her children if she did not get her 'act together'. She said that she could and would change."⁴

That type of declaration has been heard before in child protection proceedings. Often, little real change occurs for a variety of reasons. However, certain events occurred in Alice's life that prompted her to pick herself up; to seek independent supports and services for her housing needs, addictions, and her physical and mental health; and eventually be given the opportunity to parent her children by the decision of the court.

This fairness investigation is specific to this period in the family's life: from the initial apprehension until Judge Dufour's October 2011 decision.

Alice was visibly anxious when she first met with our Investigator nearly six months after the court's decision to return her children to her care. She immediately expressed fear that Eric and Katie might be apprehended again for something that she said during the interview.

Once the Investigator explained our role, investigation process and desire to better understand what happened in her case in order to prevent it from happening to other families, Alice settled and opened up about her children and recent experiences with the child welfare system.

Alice struggles every day to have a life that will keep her children and herself safe and well. This family continues to live in poverty and remains at risk of falling apart again if the proper supports and services are not in place.

3 *Supra* Note 2 at [5 and 6].

4 *Supra* Note 2 at [14].

3.1 In Context

Like Alice and her children, many First Nations families are caught in a cycle of involvement with the child welfare system.

As discussed in the 2010 *Saskatchewan Child Welfare Review Panel Report*, the roots of this intergenerational trauma can be found in the long history of policies and interventions that have fragmented families, disrupted communities, and undermined traditional systems of care.

Historically, large numbers of Aboriginal children were separated from their families of origin and culture in our province.

In the context of her parents being unable or unwilling to care for her, neither Alice's struggle with parenting herself nor her battle with poverty and addictions is unexpected.

In fact, Alice and her children are representative of the disproportionate number of Aboriginal families found in child welfare today. Cases of neglect—driven by economic and social exclusion, addictions and mental health issues—account for six out of ten child protection cases in Saskatchewan.⁵

⁵ *Canadian Incidence Study of Child Abuse and Neglect 2008*. Retrieved from www.cwrp.ca/cis-2008.

4 Analysis and Findings

4.1 Intake, Investigation and Apprehension

At Eric's birth in 2006, the Ministry of Social Services received a report of maternal drug use by Alice and appropriately initiated a child protection investigation, which determined that Eric was a child in need of protection under section 11 of *The Child and Family Services Act*. The court granted the Ministry temporary wardship and Eric was placed in out-of-home (foster) care for six months.

Finding #1:

That in 2006, the Ministry of Social Services:

- a. Had the legal authority to make the decision to temporarily apprehend Eric from the care of his mother and that the decision was:
 - In accordance with *The Child and Family Services Act* and Ministry policies and procedures.
 - Based on relevant and sufficient information.
 - Timely and to keep Eric safe and well.
- b. Provided services to Eric's mother in accordance with Ministry policy and procedures, and with the goal of family reunification.

4.2 Family Services

During the six-month temporary separation of Eric and his mother, the Ministry worked with Alice to achieve the goal of family reunification. An initial risk assessment was completed using the investigation record and other family-centered tools, which identified several high-risk factors necessitating intervention.

Throughout 2007, there is evidence that the Ministry made many referrals on Alice's behalf for her to attend detoxification, addictions treatment, and counseling to deal with her own childhood trauma. Collateral checks to all these referral agencies were completed by the Ministry to effectively monitor her participation.

When the six-month order expired, Alice and the Ministry entered into two successive Agreements for Residential Services. This meant that while the Ministry continued to work with Alice, Eric remained in out-of-home care. Her participation in addictions treatment or counseling was short-lived and little progress was made to build her parental capacity.

Alice had baby Katie in 2007. Katie was born addicted to Methadone and Ritalin. Katie was apprehended and the court found her in need of protection. When Katie was discharged from the hospital in December 2007, she was given Morphine to manage her withdrawal symptoms and was placed in the same foster home as her brother.

Finding #2:

That in 2007, the Ministry of Social Services had the legal authority to make the decision to temporarily apprehend Katie from the care of her mother and that the decision was:

- In accordance with *The Child and Family Services Act* and Ministry policies and procedures.
- Based on relevant and sufficient information.
- Timely and to keep Katie safe and well.

4.3 Concurrent Permanency Planning

Shortly before Katie's birth, the Ministry of Social Services notified Alice that it intended to seek a court order to make Eric a permanent ward of the province.

The approval to seek permanence for Eric, and subsequently Katie, was done in accordance with timelines defined in Ministry policy,⁶ which are intended to ensure that a child does not languish in care without the stability and security of home. Under the circumstances at the time, the rationale of why Eric and Katie required permanence was adequate and reasonable.

As part of child protection proceedings, Alice was advised by the Ministry to obtain her own legal counsel to represent her interests. The proceedings were adjourned several times in 2008 for this purpose.

⁶ Saskatchewan, Ministry of Social Services, *Family-Centred Services Policy and Procedures Manual* (March 2004) at s.7.1.

The Ministry of Social Services consulted with Alice regarding extended family placements for her children, which she resisted in order to prevent disclosure of information about her life and health circumstances. The Ministry took appropriate and positive steps in permanency planning to explore the possibility of keeping the children connected to extended family.

With few exceptions in this case thus far, the Ministry was compliant with the policies and procedures that guide decision-making when seeking a permanent order to make the children wards of the province. During this time, Eric and Katie were placed with appropriate temporary caregivers and the children received supports and services to address their continuing and significant needs.

Ministry policy requires that child protection workers work towards family reunification, while at the same time establishing an alternative permanency plan.⁷ Concurrent planning balances child safety with keeping families together. In this case, concurrent planning required the Ministry to:

- Seek the permanent wardship of Eric and Katie; and at the same time,
- Continue to work with Alice to reduce the risk factors necessitating interventions and be open to the potential for family reunification until the permanent order was actually made by the court.⁸

A review of the evidence indicates that did not occur. When the Ministry pursued the permanency plan for Eric and Katie in 2008, it withdrew services and did not continue to work with their mother for family reunification.

In an interview with our Investigator, the Ministry Child Protection Worker described the decision:

“...when we seek a permanent [wardship]... my Supervisor says we stop working with the parent. ...they can do what they can do. They know what they're supposed to do...we just kind of take care of the kids at that point.”⁹

In a separate interview, the Supervisor confirmed giving this direction to the Child Protection Worker.

⁷ *Supra* Note 6 at s.7.8.

⁸ *Ibid.* at s.8.1.

⁹ Interview with Child Protection Worker, Ministry of Social Services, April 24, 2012, Prince Albert, SK.

Finding #3:

That in 2008, the Ministry of Social Services had the legal authority to make the decision to obtain permanent wardship of Eric and Katie, and that the decision was:

- In accordance with *The Child and Family Services Act* and Ministry policies and procedures.
- Based on relevant and sufficient information.
- Timely and to keep Eric and Katie safe and well.

Finding #4:

That in 2008, the Ministry of Social Services did not act in accordance with its *Concurrent Permanency Planning* policy when it withdrew from working cooperatively with and providing services to Alice during the time the permanent wardship was before the court.

4.4 Case Management

As defined in Ministry policy, the entire case management process in child and family services is a series of functions, some of which are carried out simultaneously, with the outcome for children and families being safety, well-being and permanence.¹⁰

Accurate assessments lead to case plans that appropriately address the family's needs.¹¹ For family reunification to occur, the risk factors that resulted in out-of-home care have to be adequately reduced and the parent(s) must succeed in the case plan.¹²

In April 2009, Alice advised the Ministry that she was addressing her health needs. Her health had been a contributing factor used in the original request for permanency as to why she was unable to parent her children. Records indicate collateral checks to confirm Alice's progress in minimizing identified risks were not completed with health care providers; Alice's doctor was not contacted directly.

Alice secured her own accommodations in 2009, which she understood to be a significant step towards addressing another risk factor identified in the

¹⁰ *Supra* Note 6 at s.2.4.

¹¹ *Ibid.* at s.4.1.

¹² *Ibid.* at s.7.10.

original permanency request. She also completed two addiction treatment programs in 2009.

Strengths generated by her completion of the treatment programming or the recommendations from the treatment centre were not incorporated into the assessment and case planning for the children and family. This information was not assessed as progress by Alice and was not given due consideration in reducing the assessed risk.

In a December 2009 family assessment and case plan, the Child Protection Worker did identify two areas of progress including: that Alice had her own residence for several months, and that a healthcare professional had recently prescribed Ritalin to her.

As the court proceedings continued in 2010 and 2011, Alice was still trying to overcome barriers to effective parenting on her own. In our view, the positive interventions established by Alice or by the court were not adequately considered in subsequent family assessment and case plans.

Deficiencies in case management had negative consequences for Eric and Katie, directly impacting their rights, interests and well-being. The United Nations *Convention on the Rights of the Child* prescribes that where safe and possible, priority should be focused on keeping children within their family. Alice appeared to be taking appropriate steps in reducing identified risks which were not fully considered for family reunification.

Finding #5:

That during the time the permanent wardship application was before the court, the Ministry of Social Services did not act in accordance with its *Family Assessment and Case Plan* policy when Eric and Katie's family assessment and case plans did not:

- Incorporate interventions established by their mother or ordered by the court.
- Include collateral contacts with agencies and service providers working with their mother.
- Reflect accurate and objective risk assessments of their mother's progress and whether it was sufficient to reduce risk.

4.5 Working with Service Providers

Alice had misused Ritalin intravenously for many years before and during the apprehension of Eric and Katie. Alice struggled to abstain from the drug even after completing two treatment programs in 2009.

A physician certified by both the Canadian and American Societies of Addiction Medicine and a Methadone Case Coordinator from the Harm Reduction Program became aware of new research regarding adults who were possibly using stimulants such as Ritalin to self-medicate undiagnosed Attention Deficit Hyperactivity Disorder (ADHD). They indicated Alice was the first client they thought of when presented with this research.

In December 2009, diagnostic tests were administered and sent for professional evaluation. The Methadone Case Coordinator told our Investigator:

"I didn't tell her what I was doing this test for.... The first thing I said is what grade did you pass? She said 'Grade 5'. I said oh, why is that? She said 'I was bad'. What do you mean you were bad? 'Oh, I couldn't sit still...I was all over the place. They just said I was bad. I'd have to sit in the hallway all the time.' I said oh, bingo!. ...she comes from an addictive family and she was actually quite abused when she was young. So if she had healthy, aware parents it would have gone on medication, but it didn't."¹³

This was a pivotal point in Alice's treatment. The physician provided the test results to Alice's lawyer on December 16, 2009, indicating they were "highly suggestive of Adult Attention Deficit Disorder...and hyperactivity." The lawyer shared this information with the Ministry and the court.

The physician's plan was to prescribe Ritalin for a short period and then Concerta. As part of medical monitoring, Alice's arms were photographed to monitor her track marks to ensure she was no longer using intravenously.

¹³ Interview with Methadone Case Coordinator, Prince Albert Co-operative Health Centre, April 2, 2012, Prince Albert, SK.

Alice advised our Investigator that the diagnosis and treatment had a significant impact on her life including being able to stay on task and that her “thinking” had gotten better.¹⁴

As stated in an interview, the Child Protection Worker described the Ministry’s reaction,

“...we have the disclosure [by Alice] that she’s used [Ritalin] since 12 years-old and now she’s got the drug of her choice prescribed to her.”¹⁵

The Ministry Supervisor stated:

“I believe this is the time when we were really surprised that the doctor would prescribe that...I guess doctors can prescribe though that’s the bottom line, but he is a specialist with the Methadone program. We did talk to her family doctor asking...would you [as a family doctor] prescribe Ritalin to a person who has abused Ritalin in the past? And I believe her response was absolutely not. So I think we were surprised by [the other doctor’s] decision.”¹⁶

Based on the long-term history and relationship between Alice and the Ministry, it may be reasonable that they were surprised and concerned about the diagnosis and treatment.

We believe this may have been an opportunity for the Ministry to apply the lens of fairness by pausing to reflect on the medical diagnosis. There was no contact with the expert physician treating Alice’s addictions and ADHD diagnosis at this time, and no second opinion from a physician with comparable expertise was secured or any other steps taken to resolve their concerns.

The Ministry had minimal engagement with professionals at the Harm Reduction Program who worked with Alice. The focus was almost exclusively on gathering drug screens to monitor Alice’s compliance and they participated in one joint case conference.

Alice’s grandmother died in early 2010. She was an influential figure for Alice, the person who spent quality time with her. In her interview with our Investigator, Alice said that after her grandmother’s death,

“...that’s when I realized...if I lose my children, I’m losing them forever...and everything just came out and that’s when I started seeing a psychologist [mental health counselor] and when I started to straighten out.”¹⁷

In July 2010, Alice’s Mental Health Counselor wrote a letter indicating that her depressive symptoms had decreased and she was developing coping skills and addressing issues of loss, grief and addictions. Alice showed this letter to the Child Protection Worker, but the information was not independently confirmed with the service provider, nor was it included in the assessment and case plan.

Ministry policy states that an important function in the continuum of case management is to help the family identify, engage and work with a network of service providers.¹⁸ As noted previously, these service providers often hold expertise outside of the Ministry’s scope, yet are complementary and integral to successful case management.

We believe that family-centered practice became incomplete when Alice’s network of service providers were not integrated into case planning. We note that existing policy, practice guidelines and training specific to mental health issues may not be sufficient to effectively guide practice to maintain, support and preserve the family in the least disruptive manner.¹⁹

Finding #6:

That during the time the permanent wardship application was before the court, the Ministry of Social Services:

- Did not agree with the mental health services provided to Alice by a medical expert.
- Had limited consultation with other mental health professionals in this case.

These actions were influenced by a lack of specific policy, practice guidelines and sufficient training for staff to identify and manage cases involving parental mental health issues.

14 Interview with A.H., March 27, 2012, Prince Albert, SK.

15 *Supra* Note 9.

16 Interview with Supervisor, Ministry of Social Services, May 17, 2012, Prince Albert, SK.

17 *Supra* Note 14.

18 *Supra* Note 6 at s.5.3.

19 *Ibid.* at s.1.1.

Finding #7:

That the Ministry of Social Services did not act in accordance with its *Working with Service Provider Systems* policy during the time the permanent wardship application was before the court, by not:

- Identifying service providers to help develop a network of formal and informal resources.
- Facilitating processes to help the family, service providers and Ministry come to an agreement on a coordinated plan for service with mutually agreed upon outcomes.

4.6 Court Ordered Family Visits, Services and Assessment

If the court deems it is safe for children, every reasonable effort should be employed to maintain the children's access to their parent. On April 20, 2010, the court issued an interim order that the children would remain in the care of the Minister for six months. Judge Dufour found that the Ministry did not comply with this interim order as some of the prescribed family visits did not occur.

We acknowledge that the Ministry tried to locate a placement for the children together and closer to Prince Albert, but due to Katie's health needs she was placed in a foster home in the north. Katie attended four visits during the time of the April 20, 2010, interim court order. These visits took place in the Ministry office, rather than transferring them to the family home as stipulated in the order.

Upon investigation, we have come to understand the adversity the Ministry faced in meeting its obligations for family visits under this court order. However, the matter should have been brought back before Judge Dufour to explain those challenges and explore alternative solutions.

This resulted in a three-month delay in the next visit, significantly affecting bonding between the children and their mother. It was clearly in the best interest of Eric and Katie for Alice to develop competency in parenting, as this was a primary risk factor in the family assessment and case plans.

Judge Dufour found the Ministry was non-compliant with the next interim order of October 7, 2010, which stipulated that access would occur between Eric and Katie and their mother on a graduated basis including: four two-hour in-home visits; five full day visits; three overnight visits; and one weekend visit.

The Judge took the unusual step of providing the dates for all of these visits and they were subject to checks by Mobile Crisis or the Ministry. A new condition of this order was for Alice to work with a parent aide, and a referral was sent to the Native Co-ordinating Council on October 27, 2010, for a Family Support Specialist to be assigned.

Katie was moved in mid-October 2010, from the northern placement back to Prince Albert. The Ministry was compliant with all of the court ordered two-hour in-home visits and the day visits. These visits were supervised by the Family Support Specialist who provided monthly reports to the Ministry. She noted that Alice's interactions with her children were positive and that she made some conscious efforts to use the strategies that had been recommended.

Once again the family assessment and case plan completed at the end of 2010 did not include this progress or mention the reports from the Family Support Specialist, which indicated the potential for Alice to be an effective parent. The role of the Family Support Specialist in providing supervision and guidance to Alice was also not incorporated in the case plan.

Our Investigator interviewed the Family Support Specialist who worked with Alice during this time. She said that her supervision of the home visits was cancelled by the Ministry on February 11 and February 15, 2011. The contract was then terminated altogether two weeks later, with no explanation by the Ministry. This part of the court order was cancelled without permission of the court. The Family Support Specialist said the cancellation of the contract was,

"Very concerning especially when someone shows so much improvement and works so hard and is under so much scrutiny."²⁰

The Ministry informed Alice that they were moving the home visits back to their office and they would be reduced to two hours every two weeks. Alice was told

²⁰ Interview with Family Support Specialist, Native Co-ordinating Council, April 2, 2012, Prince Albert, SK.

this was due to her falling asleep for ten minutes during a home visit. Any additional reasons for cancelling these home visits and the subsequent court ordered overnight visits were not fully explained during our examination.

Concerns about this incident could have been more effectively addressed by the Child Protection Worker or the Family Support Specialist if that service had been continued. Since a primary risk was Alice's parenting capacity, it appears incongruent to withdraw the successful services of the Family Support Specialist and move the visits from a home environment to an office.

During our review, we observed that the Family Support Specialist was a valuable intervention for Alice to develop skills to be a good parent. Alice responded well to culturally based services. The documentation demonstrates a respectful relationship and Alice appeared receptive to the guidance and coaching provided. Alice was taught specific parenting strategies to implement during family visits.

A parenting assessment was also ordered by the court. The assessing psychologist indicated to our Investigator that he was not provided access to the complete family services file.²¹ He stated that he felt pressured to come down on a particular side of the parenting assessment, but that he simply reviewed the data before him. Judge Dufour determined in his October 26, 2011, decision that,

"It certainly appears that the Ministry was trying to direct its expert to support its position, something that is highly improper. ... In my opinion...[the] assessment was tainted by the Ministry from the very beginning...[and] focused almost exclusively on the negative aspects of...[the mother's] past and there was almost no consideration given to her remarkable progress."²²

Finding #8:

That the Ministry of Social Services did not comply with the April 20, 2010, interim court order visitation provisions, and the Ministry had a duty to bring the matter back before the court to vary the order.

Finding #9:

That the Ministry of Social Services did not comply with the October 7, 2010, interim court order visitation or family support provisions; that this was not justifiable; and, that it had a duty to bring the matter back before the court to vary the order.

Finding #10:

That the Ministry of Social Services did not ensure an objective parenting assessment was completed as ordered by the court, and did not provide the assessor pertinent documents or refer him to service providers working with Alice.

4.7 Court Intervention

On April 13, 2011, Judge Dufour ordered that visits be returned to the family home to better assess Alice's capacity to parent. The Family Support Specialist was not reinstated; the visits were supervised by the Ministry Child Protection Worker and Assistant Supervisor.

During our investigation, we observed the supervision provided by the Ministry was very different from the supervision of the Family Support Specialist. Alice advised our Investigator that the scrutiny of the Ministry supervision was intense and made her nervous.²³

Records indicate that the Child Protection Worker and Assistant Supervisor did not offer guidance or coaching to help Alice build her parenting capacity. Alice took it upon herself to arrange to have a parent aide from the Native Co-ordinating Council in attendance to provide personal support during four out of nine visits between April 20 and August 24, 2011. We noted the value of culturally appropriate support for Alice.

When the trial commenced on September 6, 2011, the Ministry had maintained its original decision to apply for a permanent order for Eric and Katie. Ministry staff testified in court about concerns that Alice was injecting Ritalin and that there was insufficient bonding occurring between Alice and the children.

21 Interview with Registered Doctoral Psychologist, May 10, 2012, Saskatoon, SK.

22 *Supra* Note 2 at [80 and 84].

23 *Supra* Note 14.

Judge Dufour found that the Ministry's evidence that Eric and Katie were in need of protection lacked substance and some of the concerns were overstated and did not hold much weight under cross examination.

He determined that Eric and Katie were still in need of protection not due to an immediate or perceived risk, but because Alice needed more practice and more real life experience with her children in a home setting.²⁴

Eric and Katie returned to Alice's care on November 9, 2011, under the supervision of the Ministry for a period of one year. The court had two conditions: that Alice continues to participate in the Harm Reduction Program and takes Concerta as prescribed; and, she was to have contact with a Family Support Worker or Child Care Specialist from the Native Co-ordinating Council.

Furthermore, the Judge ordered the Ministry to submit an explanation as to why the court ordered supports and visits were cancelled and a plan as to how it would ensure compliance by staff in the future. In February 2012, the Ministry submitted a six point plan to the court in response and the court accepted the plan as adequately satisfying the matter.

24 *Supra* Note 2 at [92].

5 Applying Administrative Fairness

While every member of the public should expect to be treated fairly by government service providers, clients with significant vulnerabilities or those affected by decisions of great importance—like the permanent separation of two children from their parent—need this even more.

Foundational to this respect is good communication. People should clearly understand the reasons for decisions and the implications of those decisions. They also need to know what, if anything, can be done to have the decision reconsidered.

5.1 Substantive, Procedural and Relational Fairness

When investigating matters of substantive and procedural fairness, the Advocate for Children and Youth examines whether the decision-maker was thorough and impartial in making the decision.

This includes whether legislation, policy and procedures that define which decisions are non-discretionary (i.e., legal rights and entitlements) and discretionary (i.e., requiring case-by-case professional assessment and judgement) were followed or appropriate.

In this case, the Ministry of Social Services made multiple decisions over several years of involvement with this family. A number of these decisions were appropriate. However, the decision to not engage in concurrent planning for Eric and Katie resulted in the Ministry withdrawing services from their parent.

In our opinion, this withdrawal had a domino effect on the quality of case planning and management, as well as compliance with other Ministry policies and subsequent court orders.

When substantive or procedural decisions are made unfairly, as appears to be the case with the lack of concurrent planning, it is harder to maintain a positive working relationship between the decision-maker and the client.

As the relationships deteriorated, the process became more adversarial and complicated by the delays inherent to the judicial process and the positional nature of competing interests. The result was a breakdown in the cooperation, trust and information sharing between the Ministry of Social Services, Alice, legal representatives and other service providers. They did not appear to be working together to explore multiple case plan options, each of which could have had very different and significant potential impacts for Eric and Katie.

We believe the decision to not provide concurrent planning and continue to work cooperatively with Alice may well have affected the bond between the children and their mother. In reviewing the case files and court record, it becomes apparent that once the relationship dissolved adversarial positions became entrenched, resulting in:

- supervised family visits were reduced from an average of three times per month to once per month;
- incomplete family assessment and case plans;
- a lack of collateral checks with service providers; and,
- a lack of consideration of the parent's progress or options other than permanent wardship for the children.

Finding #11:

That the Ministry of Social Services:

- a. Had the legal authority to use its discretion to withdraw the application for the permanent wardship of Eric and Katie, and that the decision to not do so, with evidence of progress made by their mother during the court process, was substantively unfair to the children.
- b. Had policy recognizing Katie and Eric's rights to protection, family and permanence, and that not complying with policy on multiple occasions was procedurally unfair to the children.
- c. Did not provide relational fairness to Alice in working with her and other service providers to address risk factors that prevented family reunification.

6 Recommendations and Advice

The Advocate for Children and Youth Act mandates that the Advocate is permitted to make recommendations to and advise on any matter relating to the interests and well-being of children or youth to any minister responsible for services to children or youth.

This administrative fairness investigation illuminates some issues and challenges pertaining to this case. We believe that this case highlights the importance for children, youth and their families to be treated fairly when accessing government services. Neither child protection workers nor their supervisors set out to be unfair. They are busy professionals who are focusing on ensuring child safety in a context of limited resources and multiple demands.

Respectful and effective working relationships with parents are in the best interests of the children and youth who receive child welfare services. We know this can be challenging for child protection workers who have to manage cases where caregivers struggle to overcome addictions, mental health issues and poverty to effectively parent.

6.1 Concurrent Permanency Planning

The Ministry has policy that outlines *Concurrent Permanency Planning*, which requires child protection workers to work toward family reunification while at the same time establishing an alternative permanency plan. A review of the evidence indicates that concurrent permanency planning did not occur in this case.

The Advocate believes that Ministry staff must be supported to understand the importance of adhering to policy and in meeting their obligations under *The Child and Family Services Act*. Based on our long-time experience in delivering advocacy services to children and youth across the province, we believe that non-compliance with the *Concurrent Permanency Planning* policy does not support the best interest of children or youth.

Recommendation #12-20852

That the Ministry of Social Services review compliance with *Concurrent Permanency Planning* policy and improve practices where required to ensure staff work towards family reunification, while at the same time establish a safe alternative permanency plan.

6.2 Parental Mental Health

The Advocate for Children and Youth continues to receive numerous issues and be involved in child welfare cases where parental mental health issues exist. Our significant concerns have been cited in previous reports. This investigation highlighted the need to ensure adequate policy, awareness and training is in place to better support parents and connect them with mental health services.

Ensuring children and families are supported involves addressing complex issues and finding creative solutions for success. While the Ministry has made some progress in advancing training and creating structured supports required, the task is not theirs alone; children and youth can only benefit from a government wide response to providing enhanced mental health services. The Advocate has stated previously that working with parents with mental health issues requires coordination across sectors and should be incorporated into the *Saskatchewan Children and Youth Agenda*.

For Social Services, supporting families includes coordinating services that are responsive to increase the potential for successful outcomes for children and youth in Saskatchewan.

Recommendation #12-20853

That the Ministry of Social Services further develop and implement policy, practice guidelines and training to ensure staff can effectively identify and manage cases involving parental mental health issues.

6.3 Working with Service Providers

Repeated reviews and recommendations from the Advocate's office have called for integrated case management and planning, as did the recommendation from the 2010 *Saskatchewan Child Welfare Review Panel Report*. In this case, many of those issues involved both the health and social service sectors.

The Advocate continues to recommend better coordination and integration of services provided to children, youth and their families.

Recommendation #12-20854

That the Ministry of Social Services review compliance with its *Working with Service Provider Systems* policy and improve practices where required to ensure staff collaborate with service providers to benefit children, youth and their families.

6.4 Touchstones of Hope

The Advocate observes that the relational fairness in this case reflected tensions in the child welfare system and the Aboriginal peoples involved in this case.

As a First Nations woman, Alice aged out of the child welfare system and struggled with reconciling her past with a system that appeared not to understand her lived experience. We were encouraged by the respectful relationship between Alice and staff from the Native Co-ordinating Council and the culturally based services they provided.

The Advocate believes that children, youth and their families benefit from and are entitled to receive culturally-based services.

The *Touchstones of Hope for Indigenous Children, Youth and Families* is training based on principles and values of Indigenous philosophies regarding traditional systems of care and protection.²⁵ It promotes respect for children and youth as a part of their collective environment.

25 Blackstock, C., Cross, T., George, J., Brown, I., and Formosa, J., (2006). *Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families*. Available at <http://www.fncaresociety.com/publications/fncfcs/>

Recommendation #12-20855

That the Ministry of Social Services provide training to all Child and Family Services staff on the *Touchstones of Hope for Indigenous Children, Youth and Families* as a first step in achieving better outcomes for First Nations and Métis children and youth.

6.5 System Transformation

In 2010, the Saskatchewan Child Welfare Review Panel provided a report to the Government of Saskatchewan outlining a vision for much-needed change.

The Advocate has seen initial steps on a number of the recommendations, and outlined this progress in his *2011 Annual Report*. Fundamental transformation will take time and much work remains to be done. Creating success for our children and youth today will encourage a brighter future for these citizens as Saskatchewan continues to grow.

How would fundamental change in child welfare make a difference to Alice and her children?

- Government would focus on supporting families and preventing children from being abused, neglected, and coming into care. Rather than building a case for apprehension, the system would focus on the question: "What supports does Alice need to successfully raise her children?"
- The court system would work better for families. Rather than an adversarial process, Alice and the Ministry may have been able to resolve issues through alternate dispute resolution. When Alice did need to appear in court, she would have a greater understanding of the process and support as the case proceeded without lengthy delays.
- As First Nations persons living off-reserve, Alice and her children would have benefited from supports more closely aligned with their culture.

Recommendation #12-20856

That the Government of Saskatchewan publicly and actively renew its commitment to and prioritize implementation of the 12 recommendations and supporting action steps of the 2010 *Saskatchewan Child Welfare Review Panel Report*.

7 Conclusion

The lessons from this administrative fairness investigation are lessons for all of us.

The Advocate for Children and Youth believes that Alice's experience is very important, not solely because of what did or did not happen but because her story allows us to consider how we perceive children and the fulfillment of their rights.

The Advocate did not examine the services in this case because of any complaint made by Alice or other adult, but because we recognized that throughout the unfolding of events that Eric and Katie's voices remained silent.

In this instance, Eric and Katie were entitled to appropriate services in accordance with policy and legislation in Saskatchewan, but they also possessed rights as outlined in the Articles of the United Nations *Convention on the Rights of the Child*.

While not a formal recommendation, it is with considerable thought and empathy that we provide some additional advice pertaining specifically to Eric, Katie and their mother.

Alice and her children experienced shortcomings in administrative fairness. This needs to be acknowledged. To help this family move forward, we would like to see optimal, not average, supports put in place. Their road will not be easy, and every effort should be made to help this family succeed.

We hope that the experience of Alice and her children will help us do better for all Saskatchewan children and youth.



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