



The Best Place on Earth

April 29, 2010

Mary Ellen Turpel-Lafond
Representative for Children and Youth
Office of the Representative for Children and Youth
#201 – 546 Yates St
Victoria, BC V8W 9J1

Dear Ms. Turpel-Lafond:

I am writing in response to your letter of April 22, 2010 to Premier Gordon Campbell regarding Section 10 of the *Representative for Children and Youth Act*.

Your letter outlines a request for information you have made for cabinet related documents. As Secretary to Cabinet, it is my responsibility to determine whether and how to allow access to cabinet related materials which under common law as well as by statute, (see *The Freedom of Information and Protection of Privacy Act*), are protected by Cabinet privilege.

I am aware your original request for information regarding changes to the Child in Home of Relative Program and the Extended Family program was made through the Ministry of Children and Family Development and that as a result of that request you received materials from the ministry addressing that topic. The ministry's response also indicated that direction would need to be sought regarding your request for cabinet related documents addressing that same topic.

While cabinet related documents are generally outside the scope of such requests, government acknowledges that at times the work of independent offices, such as yours, necessitates sharing such information if assurances can be given and relied upon that the information will be used specifically for the purpose intended and not disclosed other than when directed by Cabinet itself. In support of similar statutory provisions, protocol agreements are used to govern the provision of confidential materials thereby allowing independent officers to complete their work while providing Cabinet the confidence it requires that discussion and decisions relating to policy matters are not subject to improper disclosure.

Cabinet Operations, in consultation with the Ministry of Children and Family Development, sought to develop such a protocol with your office for the purpose of facilitating the release of information consistent with your request. Communication from your office to the ministry declined entering into such a protocol. Your subsequent correspondence to Minister Mary Polak, and the Premier reiterates your decision to decline participating in such a protocol and outlines your position that section 10 of the *Representative for Children and Youth Act* gives you unrestricted access to Cabinet documents and related information.

Furthermore, rather than affirm a commitment to keep such information confidential, your correspondence outlines an intent to give government prior notification if your office intends to release Cabinet related information if you intend to release such information publicly. Your letters to both Minister Polak and the Premier also suggest you will make application to court to compel production of these documents pursuant to section 10.

On my reading of all of the legislation it appears that section 10 of the *Representative for Children and Youth Act*, while purposefully broad in scope, does not apply to information protected by cabinet privilege. Section 12(1) of the *Freedom of Information and Protection of Privacy Act* prohibits the head of a public body from releasing cabinet related materials. Section 79 of that *Act* asserts notwithstanding any other enactment (such as section 10 the *Representative for Children and Youth Act*) the *Freedom of Information and Protection of Privacy Act* prevails unless expressly excluded. I see no express exclusion in the *Representative for Children and Youth Act*.

However, it appears clear that you take a different view of the matter and believe that the ambiguity should be resolved in favour of your position. But even if there may be ambiguity about whether section 10 of the *Representative for Children and Youth Act* is broad enough to extend to cabinet related materials, there is no ambiguity of government's policy intent. While recognizing that independent officers of the Legislature require access to information to complete their work, cabinet confidentiality must be protected. Therefore, Government will resolve any lingering doubt by introducing to the Legislature in this session an amendment to the *Representative for Children and Youth Act* that will clarify the scope of section 10. The amendment may be introduced as soon this week.

I would like to emphasize that the proposed amendment will not affect government's view of the status quo including its willingness to provide access to cabinet related information to your office on terms similar to those agreed upon with other independent officers. It will, however, eliminate the ambiguity as well as avoid costs associated with unnecessary court applications. Government remains fully committed to assisting you in your role as Representative for Children and Youth consistent with your enabling legislation.

Yours faithfully,



Allan P. Seckel, QC
Deputy Minister to the Premier
and Cabinet Secretary

pc: Honourable Mary Polak, Minister of Children and Family Development
Honourable Mike de Jong, Attorney General