

TERMS OF REFERENCE

Review of Policy 713 and Report to the Legislative Assembly

Mandate and Obligations of the Advocate

On June 15, 2023 the Legislative Assembly adopted Motion 50 as amended, which states:

That the Legislative Assembly urge the government to request that the Office of the Child and Youth Advocate conduct a full consultation with relevant stakeholders on any changes to Policy 713 and the impact of such changes and make public the results of all such consultations by August 15, 2023.

The Glossary of Parliamentary Procedure defines an officer of parliament as a position “responsible to one or both Houses of Parliament for the carrying out of duties assigned by statute.” In the case of the Advocate, that statute is the Child, Youth and Senior Advocate Act (S.N.B. 2007, c. C-2.7). The following are the sections of that Act which guide the Advocate on the primacy of directions from the Legislative Assembly.

15(1) *A person may petition the Advocate, in writing or otherwise, to review, investigate or provide advocacy services in relation to a matter within the jurisdiction of the Advocate under this Act.*

15(2) *A committee of the Legislative Assembly may refer any petition that is before it for consideration, or any matter relating to the petition, to the Advocate to be investigated or reviewed and a report made.*

15(3) *Notwithstanding section 17, if a matter has been referred to the Advocate under subsection (2), the Advocate, subject to any special directions of the committee, shall investigate the matter as far as it is within the Advocate’s jurisdiction and shall make a report to the committee.*

17(3) *Notwithstanding paragraph (1)(e), the Advocate shall not, due only to a lack of sufficient personal interest on the part of the petitioner, refuse to investigate or review any matter forwarded to the Advocate by the following:*

- (a) the Lieutenant-Governor in Council;*
- (b) a member of the Legislative Assembly; or*
- (c) an authority.*

Within the context of the Act, a “petition” does not refer to the particular form of petitions tabled in the Legislative Assembly but rather to any request, whatever the form, for the Advocate to act. If there is direction for the Advocate to take action in response to an individual Member or to a sub-group of members acting as a Committee, then a motion adopted by the Legislative Assembly must be given similar weight. Committees, after all, act upon the delegated authority of the Assembly as a whole.

Scope of Review

In a Report to the Legislative Assembly filed with the Office of the Speaker on May 16, 2023 the Advocate provided the following recommended parameters on any review of Policy 713:

- *The Department should withdraw notice of the review until such time as there are clear terms of reference and processes in place to accompany notice of a review.*
- *Any review should have terms of reference which clearly state which portions of Policy 713 are and are not subject to review.*
- *The terms of reference of any review should explicitly affirm that the goals and principles in Section 5 of Policy 713 are not being reviewed.*
- *Any process for the review of Policy 713 should include consultations with members of the school community, including age-appropriate consultations with students and high school student councils.*

In determining the scope of review, the Advocate has noted that these recommendations were within the contemplation of the Assembly when it adopted Motion 50. Therefore, the review will seek to meet the same standard that was recommended for the Department of Education and Early Childhood Development (EECD)

The review will consider the three areas in which the Department has focused its review and proposed changes:

- *The process by which children may self-identify or explore their gender identity and/or sexual orientation and the supports and inclusive services schools should offer consistent with their rights and best interests.*
- *The availability of washroom and changing facilities and other private spaces to all students in conformity with their gender identity and consistent with the rights of all students to reasonable privacy, dignity, and equality.*
- *The regulation of extracurricular and co-curricular activities in a manner which respects children's rights of equality and participation and the legitimate public interest in fair competition and a broad range of activities.*

In addition, the review will consider the following issues, given the broadly-expressed interest of Members in the policy goals:

- *The processes for informing and involving parents consistent with established rights, duties of educators, and the best interests of children.*
- *The conformity of policy 713 with established human rights law as expressed in federal and provincial human rights codes, constitutional principles under the Charter of Rights and Freedoms and international treaties to which Canada is a signatory.*
- *The quality of services and supports to LGBTQI2S+ students and improvements to the inclusion and experience of LGBTQI2S+ in the broader school community.*

Given the universally-expressed desire of Members to avoid certain changes to Policy 713 as adopted originally in 2020, the review will not consider or recommend the following:

- *Any potential change which removes the goals and objectives of Policy 713,*
- *Any potential change which removes established human or legal rights of children.*
- *Any potential change which imposes barriers upon LGBTQI2S+ students' participation in the school community or which interferes with the peaceful operation of "Gay-Straight Alliances"*
- *Any potential change which permits violence, harassment, discrimination or hate speech directed at any student, teacher, or parent.*
- *Any potential change which violates the statutory or regulatory legal responsibilities of any professional employed within the school system.*

Finally, the review will engage legal experts to provide legal guidance to the Legislative Assembly on the following:

- *To clarify the existing state of laws and policies regarding student privacy and parental notification, and to determine if any legal or public interest basis exists for any difference in those laws and policies as they apply to LGBTQI2S+ students and their families.*
- *To clarify the existing state of laws and policies around all children's rights to determine their terms of address in formal and informal communications, and to determine if any legal or public interest basis exists for any difference in those laws and policies as they apply to LGBTQI2S+ students and their families.*
- *To clarify the existing state of laws and policies imposing a duty of accommodation upon schools for all students, determine if any legal or public interest basis exists for any difference in those laws and policies as they apply to LGBTQI2S+ students and their families.*

Consultative Process

The review will, at a minimum, undertake the following consultative processes:

- *Offer the opportunity for all Members of the Legislative Assembly to provide the Advocate with their views and suggest possible individuals and groups for consultations.*
- *Conduct forums with a cross-section of high school students and recent graduates, including but not limited to elected student council leaders and LGBTQI2S+ students.*
- *Meet with families of LGBTQI2S+ students and as broad a cross-section of parents as time and resources permit.*
- *Engage experts in child development, mental health, educational services, and education law to establish best practices and established consensus in those areas.*
- *Provide a means of written submission to the general public, with weight to be given to submissions from within New Brunswick*
- *Invite submissions and encourage interviews with stakeholder groups representing educators and professionals within the school system, groups supporting LGBTQI2S+ students and their families, elected District Education Council and Parent-School Support Committee members*
- *Request legal briefs and submissions on the issues identified for review by the Department of Education and Early Childhood Education and relevant stakeholder groups.*
- *Review policies and peer-reviewed literature from other jurisdictions and professional associations in law, education and psychology*

Deliverables

The Advocate will report in writing through the Office of the Speaker of the Legislative Assembly by August 15, 2023. The report will follow the procedure as if making a report under Section 23(2) of the Act.