

“Lost Opportunities” report

Forum of Canadian Ombudsman (FCO) podcast

Participants: Lindsay Hunt (presenter), Linda Williamson (moderator), Director of Communications; Paul Dubé, Ontario Ombudsman; Laura Pettigrew, General Counsel; Diana Cooke, Director of Children and Youth; and Yvonne Heggie, Investigator

Lindsay: Welcome to *Making it Fair*, a podcast brought to you by the Canadian Council of Parliamentary Ombudsman. I’m Lindsay Hunt and I’m joining you from the un-ceded traditional territories of the Lekwungen speaking peoples in British Columbia, Canada.

This podcast is all about fairness. We’ll dive deep into why fairness matters, and find out how Ombudsman with special expertise in resolving complaints can make things that are wrong, right.

In today’s episode, Ontario Ombudsman Paul Dubé talks about “*Lost Opportunities*.” That’s the title of the report he issued after investigating the sudden closure of two youth justice programs in Northern Ontario. The closures came as a complete shock to the vulnerable Indigenous youths who were affected, as well as their communities. The Ombudsman’s report tells a cautionary tale of what can happen when a government plan is shrouded in secrecy.

Paul: Hi there, I’m Ontario Ombudsman, Paul Dubé. I’m here to discuss our *Lost Opportunities* report today, along with four of my colleagues.

Diana: I’m Diana Cooke, Director of the Ombudsman’s Children and Youth Unit.

Laura: I’m Laura Pettigrew, General Counsel.

Yvonne: I’m Yvonne Heggie, the lead Manager on the Investigation.

Linda: And I’m Linda Williamson, Director of Communications. I’m going to act as the moderator here today as we walk through this investigation.

Paul: Before we begin, I want to make an acknowledgement on behalf of our Office. Our work takes place on traditional Indigenous territories across the province that we now call Ontario, and we are thankful to be able to work and live on this land. In this report, we discuss the importance of seeking opportunities to contribute to reconciliation, and we are committed to incorporating recommendations from the Truth and Reconciliation Commission into our work.

Linda: Thank you, Paul. I think the best place to start the story of this case is with the reaction of one of the affected Indigenous leaders. The date is March 1, 2021. On that day, Ontario's Ministry of Children, Community and Social Services closed down 25 detention and custody programs for youth across the province. Ten of those were in the North. The young people in these centres were given only a few hours' notice that they were being moved. Some of them were put in handcuffs and shackles, which came as a shock to the staff that work with them. So here is how Alvin Fiddler, who was the Grand Chief of the Nishnabe Aski Nation at the time, told the CBC. He said: "We all thought, the days of seeing our kids forcibly removed and shackled and sent away to faraway places, away from their families and loved ones, and their communities and their homes, were behind us. But obviously, that's not the case." So, Paul, over to you: What was happening there?

Paul: Well, what was happening was the unfortunate result of the Ministry's decision to conduct what was really a secretive operation to close these programs. They had actually planned the closures for months, because youth justice facilities across the province were extremely under-used. The reasoning was that about half of the programs could be closed, and that would result in savings of about \$40 million dollars, which could be invested or reinvested in other kinds of youth programming.

What caught our Office's attention was not the policy decision to close these programs, but the way it was carried out – particularly regarding the closure of the secure custody and detention programs at Creighton Youth Centre in Kenora and the J.J. Kelso Youth Centre in Thunder Bay, which were the subject of our investigation.

So - we heard concerns about the lack of notice to staff, and the youth affected – and their families, and the limited consideration for the vulnerabilities of these young people who were moved out of these centres – for example, whether their rights were respected and what planning was done for transitioning them to new facilities.

Linda: Yvonne, could you describe the complaint that came into our Office about those programs?

Yvonne: So, prior to launching the investigation, our Office received a complaint about the closures of the two youth justice secure custody programs that Paul described, that were operated by Creighton Youth Services. The centres' programs, including secure custody, served predominantly indigenous youth from the northwestern Ontario. The complaint questioned the decision to close the programs but also raised concerns about limited notice provided to the four Indigenous youth impacted, about three hours ahead of time and with no prior consultation or planning with the impacted facilities. And the complaint also questioned whether the government considered the rights and vulnerabilities of the young people who, in some cases, were transferred further from their home communities. Similar to the concerns raised by former Grand Chief Alvin Fiddler, the complaint also mentioned concerns about the manner in which youth were transferred, including being placed in shackles, also known as "leg irons".

Linda: And by March 15 – which is two weeks after this happened – the Ombudsman announced he was launching an investigation. Paul, could you explain why you made that decision and how you framed the issues?

Paul: Sure. So, I did receive a heads-up call from the Assistant Deputy Minister the day before this exercise, advising me of the reason for the closures, citing the fact that many of these facilities were underutilized, sometimes even empty, but I didn't get much detail about how it would actually happen. So the next day, we began to hear news reports about the closures and the way they were carried out. And we certainly heard expressions of outrage from northern Indigenous communities and Leaders, and very soon afterward, we did receive that complaint, so as usual, we asked the Ministry for more details and, I think that in very short order, we decided that an investigation was in the public interest. Not about whether to close the programs or not, but on what happened, namely the failures in communication and consultation, and the impact of those failures.

Linda: Now, before we get into talking about the young people in this case, I just wanted to explain something for our listeners. When we talk about these four youths, we are purposely not identifying them in any way. Laura, could you just explain why we took that approach in this report?

Laura: Sure. The federal *Youth Criminal Justice Act* actually requires that we keep the identity and other personal information about youth in the justice system private. Youth also are generally deserving of privacy in these circumstances. There's also the United Nations Convention on the Rights of the Child and the *Child, Youth and Family Services Act* of Ontario which reinforce the importance of maintaining children's privacy. So what we did with our report is we used gender-neutral names for each of the young persons, and we also didn't identify the specific communities that they were from. What we can say is that some were male, some female, and one of the affected youths was undergoing gender transition at the time of the closures.

Linda: Now, as Paul mentioned, part of the background to these closures is the general shift in Canada away from putting young people in jail. Diana, could you comment a bit about this?

Diana: Yes. One of the significant reforms introduced with the enactment of the federal *Youth Criminal Justice Act* in April 2003 was focused on reducing reliance on the courts and incarceration in less serious cases. In Ontario, over time, this has meant a significant decrease in youth admissions to custody and detention. By 2021, many of the youth centres were significantly under utilized. However, there is still a disproportionate number of Indigenous youth in the system, many from the North. Which is why there is so much concern about sending them even further away from their families.

Linda: So this leads us back to what Paul said about our focus being not on the decision to close programs, but on how it was carried out. Our report looks at every step of that operation. Paul, you point out that the Ministry actually did do some consultation at the outset. So what was their thinking?

Paul: Well, that's true, Linda. The Ministry did do some limited consultation during its planning. For example, in working with the Ministry of Indigenous Affairs, the Ministry sought advice about minimizing the negative impact to Indigenous communities in terms of employment and family connections. But the Ministry also had concerns about labour issues and media leaks because of past incidents. Unfortunately, because of this experience, they decided to keep things on a "need to know" basis, and the result of that was that the youths involved and their families, and even some of their support personnel, were kept largely in the dark.

Linda: Laura, would you describe some of the examples that we found where these people were left in the dark?

Laura: Yes. Staff at the centres, for instance, had very little notice of what was to happen that day. The closures and also the transfers out the same day of the youth. So they had limited time to prepare the youth for what was to come, including – they weren't really able to prepare them for the fact that they were going to be transported, some of them by air in handcuffs as well as shackles. Another example: the Ministry's own staff. Some had very valuable information about the individual young persons who were impacted by the closures, which could have been shared earlier if there had been consultation, including information about a serious security risk involving with one of the transfers.

Linda: It's this kind of human story that really hits home in this report – and really underlines what was overlooked in the government's plan. It's as if the human impact of their actions was really not considered as much as it should be. But we were able to shine a light on that impact, by actually talking to the young people involved and the staff. Yvonne, our investigators spoke directly with the four youths and their families. Could you take us through a bit of what we heard from them?

Yvonne: Yes, we spoke with the four youths, as well as you mentioned, their parents or guardians, and the staff who worked with them to get an understanding of their experience that day and the reaction to the transfers. We generally heard from staff that the youth were doing well, quite well, at their original placement and had developed a good rapport with those staff. Two of the four youths were flown out in handcuffs and shackles, one ended up being driven by police after the original transport plans fell through, after a flurry of calls to make alternate arrangements, and another youth was reclassified to open custody and released shortly after that. In speaking with the youths, two of the youths expressed sadness about the closure of the youth custody program and one said they were concerned about being moved further away from their home. Staff told us that another youth appeared hurt and yet another youth, who was undergoing gender transition, was quite distressed. In terms of the parents, one was particularly concerned after not hearing from her child for days after the transfer took place. Another parent said that their child struggled with the transfer and was not really mentally prepared for it.

Linda: And since then, we've followed up with young people and their families – can you say how they're doing?

Yvonne: Yes, we did follow up with some of the youth in the course of the investigation and it appeared that the majority eventually settled into their new placements. One described some very serious challenges, but didn't attribute it to the transfer and we realized we're not really in a position to know fully what impact this had on them. We also followed up with the youth and their families when the report was being released just to make sure that they were aware and also able to access and read the report. Many expressed appreciation for the report at that time.

Linda: That's good to know. In the report, we highlighted two specific incidents where the Ombudsman found that the Ministry failed to adequately consider the best interests of the young people within its care. Diana, could you explain what we mean by that?

Diana: Sure. So the stated paramount purpose of the *Child, Youth and Family Services Act, 2017* is to "promote the best interests, protection and well-being of children." Young people who are incarcerated in the youth justice system are considered children in care under that Act. This means that decision-makers, including government, must actively consider the best interest of young people when making plans that affect them. The Children and Youth Unit has a lot of experience with youth in these circumstances.

Linda: OK. Now, Laura, what were the two incidents?

Laura: Well the first incident involved one of the transferred youths who ended up in the same place as another youth, even though there was a record of serious conflict between the two of them. Not enough attention was given to safety considerations. Another example was the case of the youth going through the process of gender transition, and the Ministry in that case failed to follow its own policy. Fortunately, in the end that individual was transferred to a facility that could meet their needs. However, the result could have been quite different if the original transfer plan had been followed.

Linda: Sure. Paul, you made specific recommendations that address those two matters – could you elaborate on those?

Paul: Sure. As always, the purpose of recommendations is to avert similar cases in the future, so to that end we recommended first of all that the Ministry ensure that its Trans Young Persons policy is followed, and secondly, that the details of any conflicts between young people identified in a security review are carefully considered from the perspective of all involved youth when arriving at placement decisions, to really ensure that youths with a history of conflict aren't housed together.

Linda: Now, the theme of "*Lost opportunities*" doesn't end with the transfers of the young people. Even after everyone was moved, things were still going wrong with the Ministry's plan. Not only did they not consult with Indigenous communities in advance, we discovered that when they finally tried to contact the communities, they couldn't. Laura, could you explain what we found?

Laura: Yes. When the Ministry staff finally attempted to contact the Indigenous communities in accordance with their very tightly scheduled plan for the day of the closures, they discovered that most of the band offices were closed because of COVID, and they didn't have another way to reach people. This was another example of a problem that could have been averted with more consultation.

Linda: And another lost opportunity was that they never asked other provinces how they handled the same issue. After all, every province has had to deal with the shift away from youth incarceration. Yvonne, the investigative team looked at the experience in B.C. – how was that different?

Yvonne: We learned that in B.C. there were some key differences in their approach to closing youth justice centres. Overall, there was more transparency and less disruption to the youth. They consulted with Native Friendship Centres, police services, and other service agencies in the course of implementing a closure. They provided advance notice to youth and staff of impending closures and they permitted youth who were scheduled for upcoming release to serve out their sentence in the existing youth centre, which meant that they would often avoid transfers further from home or other disruptions.

Linda: Of course, the whole point of doing this kind of investigation is not to demonstrate how many things went wrong, but to use that evidence as a basis for recommendations. And in this case, Paul, you made 16 recommendations to the Ministry to improve its planning in the future. Could you talk a bit about your key recommendations and how the Ministry responded?

Paul: Sure. Well as I said earlier, the recommendations are generally aimed at helping prevent this type of thing from happening again, and obviously to ensure more consultation, if ever such a plan was put in place again. So we're quite happy that the Ministry accepted all of our recommendations and has already reported back to us on the steps taken so far, and the Ministry has also committed to updating us every six months, so we will follow-up on that.

Linda: It was a very good response. Another thing you emphasize in this report is the importance of reconciliation principles. How do you see the Ombudsman's Office contributing to reconciliation?

Paul: Yes, well, it's a high priority for us. The team and I are committed to working towards meaningful and lasting reconciliation with First Nations, Inuit and Métis peoples. And I've said often, our Office is actually uniquely placed to encourage public sector bodies to reflect learning from the Truth and Reconciliation Commission in their operations. At the same time, we recognize that many in Indigenous communities might view us as a government service, rather than as an independent body that can help them, so we have work to do with respect to outreach and engagement and we're planning actively to do that. Within our Office, we are engaging in ongoing learning. Diana's Children and Youth Unit has established an Indigenous Circle, which is a team of staff who focus on cases related to Indigenous children and youth. We are also working with other Ombudsman colleagues across Canada to share best practices for listening to Indigenous communities and finding ways to help them with their concerns. So I expect we will have more to say about this in a future podcast!

Linda: That's great. More to come! And on that note, I want to let everyone who's listening know that they can read more about the *Lost Opportunities* investigation on our website – at ombudsman.on.ca. You can find the full report there, and any updates that we publish in the future. You can also order a hard copy of the report from our Office; just send us an email and we'll be happy to send you one.

And with that, thank you to the four of you for this discussion, and to the CCPO for making it happen, and to everyone who took the time to listen. Bye for now.

Lindsay: Thanks for listening to *Making it Fair*. To find out more about the investigation highlighted in this episode, visit the Ontario Ombudsman's website at ombudsman.on.ca. If fairness matters to you, like, subscribe, and share our podcast, and watch for our next episode, coming soon.
