

**OACAS Submission to Standing Committee on Government
Agencies, Bill 42, Ombudsman Amendment Act (Children's Aid
Societies), 2013**

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Ontario Association of
Children's Aid Societies

The voice of child welfare in Ontario

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OACAS Submission to Standing Committee on Government Agencies

Bill 42, Ombudsman Amendment Act (Children's Aid Societies), 2013

Introduction

Ontario Association of Children's Aid Societies (OACAS) is a membership organization representing 44 of the 46 designated child protection agencies in Ontario. OACAS, in support of its members, is:

...the voice of child welfare in Ontario, dedicated to providing leadership for the achievement of excellence in the protection of children and in the promotion of their well-being within their families and communities.

For over one hundred years, OACAS has demonstrated a history of successful advocacy, member services, and public education on behalf of its member Children's Aid Societies (CASs), as well as the children and families they serve in Ontario. The strength of OACAS lies in both the extent of its membership and the commitment and participation of the 44 member CAS's.

Ontario's Children's Aid Societies (CASs) have a unique and statutory mandate. They provide critical and essential services, which are a safety net for the most vulnerable members of our society – infants, children and youth who are at risk of or are experiencing physical, sexual and/or emotional abuse, neglect or abandonment. CASs are mandated to intervene if a caregiver cannot adequately care for or provide for a child.

On behalf of the Province of Ontario, CASs are legislated under the *Child and Family Services Act (CFSA)*¹ as the only authorities with the mandate:

- To investigate allegations that children are in need of protection;
- To protect children;
- To provide guidance, counselling and other services for protecting children and for the prevention of circumstances requiring the protection of children;
- To provide care for children assigned to its care under this Act; and
- To place children for adoption.

This legislation and the supporting regulations, directives and standards prescribe specific and detailed requirements for what services CASs must provide, how they must provide these services, including services to Aboriginal children and families and French language services, and the timelines in which these mandatory services must be provided.

¹ Child and Family Services Act R.S.O 1999. Part III Section 15

Preamble

Ontario Association of Children's Aid Societies acknowledges the introduction of *Bill 42, Ombudsman Amendment Act (Children's Aid Societies), 2013*, which would extend the Ombudsman's oversight mandate to Children's Aid Societies (CASs).

OACAS also acknowledges the Ontario government's recently announced² intent to introduce legislation aimed at enhancing oversight and increasing transparency across government and the Broader Public Sector. If passed, such legislation would give the Provincial Advocate for Children and Youth new investigative powers. Notwithstanding this announcement, Bill 42 is pending review by the Standing Committee on Government Agencies. It is important that OACAS be on record with respect to any additional oversight of Children's Aid Societies, regardless of which body would be charged with providing it.

With this submission OACAS offers **contextual** information with respect to the service delivery model and the legislative framework for child protection in Ontario. Information includes the legislated bodies and processes in place that provide oversight of CASs, influence child welfare practice and review complaints of people seeking and receiving child protection services.

This submission also contains **comments** regarding Bill 42's objective of enhancing CAS accountability and transparency.

Finally, this submission contains **recommendations** to inform discussions about expanding the Ombudsman's mandate, particularly with respect to the potential impact on the delivery of child protection services and on outcomes for children and families.

Bill 42 proposes to enhance public accountability and transparency of Children's Aid Societies through the expansion of the Ombudsman's mandate. OACAS knows that accountability and transparency are directly linked to public confidence in CASs, which is essential to agencies' ability to deliver services that keep children safe. Indeed, CASs are actively engaged in a process with government that will lead to public reporting of performance indicators. OACAS therefore welcomes discussion of any proposal to enhance accountability and transparency with the goal of improving outcomes for children and families.

To achieve this goal, the Association believes that the bill must be viewed within the context of the existing suite of legislated entities that provide oversight of CASs, influence child welfare practice and review complaints. The bill's introduction creates an opportunity to review the scope, mandate, strengths and gaps of these entities. Such a review could consider the extent to which these entities are aligned with the paramount purpose of the *Child and Family Services Act* – namely, to promote the best interests, protection and wellbeing of children. It would also help determine whether the bill, as drafted, would achieve its stated objectives.

² <http://www.premier.gov.on.ca/news/event.php?ItemID=28587&Lang=EN>

In the absence of such a review, OACAS believes the addition of Ombudsman oversight to the existing suite of oversight, influence and complaints entities risks creating confusion for the public and may negatively impact service delivery. Moreover, the Ombudsman's focus on adult concerns may inadvertently lead to delays with respect to decisions about children's wellbeing.

Ultimately, OACAS and its member CASs want to see a system of legislated entities that is streamlined, accessible, resolution-focused, that produces timely results and, most importantly, puts children first in keeping with the paramount purpose of the CFSA. To achieve this goal, OACAS recommends that government:

- ❖ conduct a comprehensive review of existing oversight, influence and complaints entities that is guided by the following questions:
 - Are the needs and best interests of children at the centre of proposed options?
 - What changes may be needed to address gaps and add value?
 - What entity is best positioned to address the problem?
 - What solution ensures the necessary expertise in child and youth engagement? and
- ❖ refrain from expanding Ombudsman oversight to Children's Aid Societies in the absence of such a comprehensive review to avoid layering on an additional process that may not be in the best interest of children.

Context of CAS work

There are 46 children's aid societies designated by the Province of Ontario to deliver child protection services. CASs are independent, not-for-profit corporations that are governed by local boards of directors. They deliver critical services that provide an essential safety net to the most vulnerable members of our society – infants, children and youth who are experiencing, or are at risk of experiencing, physical, sexual and/or emotional abuse, neglect or abandonment. Only CASs are mandated to deliver child protection services, which means they are required to respond to all calls regarding a child's safety within timelines and according to standards that are prescribed in law. Unlike other service providers, they cannot defer service or create wait lists. Their work is complex and challenging and it intersects with multiple social issues, including poverty, mental illness, substance abuse, domestic violence and custody disputes.

Children's Aid Societies protect and safeguard most children while they remain with their families at home. This work involves complex cases in which child protection concerns have been verified and where there exists the risk of, or actual, abuse and neglect. Members of the public may be surprised to know that the great majority of all open and ongoing protection cases of CASs involve this family-based support, which takes the form of intensive assessments

and service plans, contacts with other service providers and ongoing supervision of children while they remain in the family home.

(i) Public confidence and the duty to report

Section 72³ of the Child and Family Services Act stipulates that all Ontarians have an ongoing, legal obligation to directly and promptly contact their local Children's Aid Society if they suspect a child is or may be in need of protection. In addition, every person who performs professional or official duties with respect to children is subject to sanctions for failing to report information related to a child they suspect is or may be abused or neglected.

For members of the public to fulfill their legislated duty to report abuse and neglect, they must have confidence in Children's Aid Societies. They need to trust that CASs will conduct their child protection work lawfully, according to prescribed standards and with clear lines of accountability. Public confidence in CASs is essential for the child welfare system to keep children safe.

(ii) Legislative authority and existing oversight, influence and complaints entities

Children's aid societies are designated by government to deliver child protection services in Ontario under the legislative authority of the *Child and Family Services Act*. The Ministry of Children and Youth Services (MCYS) funds CASs and oversees their delivery of child protection services.⁴ MCYS monitors CAS compliance with the legislation, supporting regulations, prescribed service standards, timelines and policy directives through ongoing service and operational reviews.⁵

CASs also fall within the jurisdiction of six additional legislated bodies and processes that are external to MCYS. These entities fall into three categories: those with **formal oversight** over CASs, those that **influence** the work of CASs and those that hear **complaints** from the public regarding a CAS's decisions and the actions of its employees.

Taken together, these entities provide necessary checks and balances on the child welfare system and hold Children's Aid Societies accountable for their actions.

Bodies with formal oversight over CASs

The **Family Courts** preside over a wide range of CAS decisions related to the safety and permanency of children in need of protection. A family court judge decides on matters of apprehension, supervision of children and youth in care, supervision of families with children found in need of protection, Crown Wardship and adoption.

³ Child and Family Services Act R.S.O 1999. Part III, S.72

⁴ <http://www.children.gov.on.ca/htdocs/English/topics/childrensaid/childrensaimsocieties/index.aspx>

⁵ Includes Crown Ward reviews, client service audits regarding children in care, adoption, foster licensing and standards; funding reviews/oversight, broader public sector policy directives

The **Child and Family Services Review Board (CFSRB)**⁶ is established under the Child and Family Services Act (CFSA) as an adjudicative tribunal mandated to review, and in some cases reverse, certain CAS decisions in the areas of residential placements, adoption, foster care and secure treatment. Its decisions are binding on CASs (although subject to judicial review.) CFSRB decisions can have significant clinical consequences for the children and youth involved. (See below for details of CFSRB complaints processes.)

The Office of the **Auditor General** of Ontario⁷ is an independent office of the Legislature that conducts value-for-money and financial audits of the provincial government, as well as certain agencies in the broader public sector. Child protection services as delivered by MCYS along with four CASs (Thunder Bay, Toronto, York and Peel) were the subject of an audit of the Auditor General in 2006, as well as a follow-up report in 2008. CASs are required to respond in writing to each recommendation made by the Auditor General and are accountable for taking corrective actions in areas identified in reports issued by that Office.

Bodies that influence the work of CASs

The **Office of the Provincial Advocate for Children and Youth (OPACY)** is an independent office of the Legislature that provides individual and systemic advocacy for children and youth who are seeking or receiving CAS services. The advocacy of OPACY informs and influences the work of CASs. OPACY promotes policy and service improvements for young people in care by elevating their voice and experience. (See also complaint processes, below.)

The **Office of the Children's Lawyer** can be seen to influence the work of CASs through its representation of children in child protection proceedings. The Court appoints a Children's Lawyer to represent a child's interests in matters where the child's views may differ from the views of parents or the CAS, where the parent is absent or where the child has suffered abuse. The Children's Lawyer helps ensure legal proceedings appropriately focus on the expressed preferences the child.

The **Office of the Chief Coroner** influences child welfare policy and practice through a 'lessons learned' approach by issuing reports and recommendations to CASs and MCYS following the death of a child receiving child protection services. These recommendations require a formal response within a prescribed timeline and contribute to system improvements aimed at preventing future child deaths.

Complaints processes

⁶ http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm (Sec 207)

⁷ <http://www.auditor.on.ca/en/>

Complaints processes were established in Ontario to safeguard the rights of children, youth and adults who seek and receive child protection services. They offer an additional measure of accountability for the child welfare system by providing the people most affected by CAS decisions with a forum to have their concerns reviewed by people not directly involved with their case.

However, OACAS suggests that, taken together, these processes do not function as a cohesive system. While they reflect positive, incremental efforts by government over the past two decades to promote transparency, accountability and protection of client rights in the context of child protection services, in their current form they are a duplicative and disjointed suite of processes that may lead to confusion about where to raise concerns and dissatisfaction with the limited scope of the remedies they can offer. The time required by child protection workers to participate in these processes, sometimes concurrently, can lead to less time spent working with children and families. Moreover, their general focus on the concerns of adults may inadvertently undermine their ability to promote the best interests of children.

Following is a brief description of the mandate, scope and limitations of the processes currently in place to address complaints with respect to Children's Aid Societies. While there are notable differences among them, they lack broad powers of investigation, are focused largely on the concerns of adults, are duplicative and, with limited exceptions, are rarely accessed by young people.

The **Internal Complaints Review Panel (ICRP)** is a process that each CAS is required by regulation^{8[2]} to have in place to address the written complaints of people seeking or receiving CAS services⁹. The process involves striking a panel of individuals not involved in the complainant's case, including at least one person not employed by the agency, to review the complaint. Participating in an ICRP can lead to greater clarity regarding the actions of a CAS, as well as improved communication between complainants and CAS staff. However, as a process that is internal to the CAS, it may not be seen as sufficiently independent. Moreover, children and youth rarely access the ICRP to raise concerns.

Current rules allow an individual to request an ICRP while simultaneously lodging a complaint with the Child and Family Services Review Board (CFSRB).

In addition to its adjudicative mandate with respect to certain CAS decisions (see above), the **Child and Family Services Review Board (CFSRB)** is mandated to review complaints and

^{8[2]} CFSA Regulation 494/06

⁹ Refers to children, parents, caregivers

concerns of people seeking and receiving services from a CAS. However, it lacks the legislative authority to investigate these complaints.

The CFSRB process is duplicative of the Internal Complaints Review Panel. It is also limited to procedural, rather than substantive, issues. While a complainant may derive satisfaction from attending a quasi-judicial hearing of the CFSRB, the process leads to limited remedies, such as an order that the CAS clarify its decisions in writing for the complainant. In this way, complainants may perceive the tribunal to have greater authority to effect change than is actually the case.

Children and youth do not typically raise concerns with the CFSRB, except to request a review of their residential placement.

The **Office of the Provincial Advocate for Children and Youth (OPACY)** is the body that youth in care most often turn to with concerns and complaints. OPACY has unique expertise in engaging and interviewing children and youth and helps young people who are seeking or receiving CAS services to access their rights.

However, although OPACY is an Office of the Legislature, it lacks the investigative authority, subpoena power and access to information possessed by its counterparts in other Canadian jurisdictions. While OPACY plays an important role with respect to the rights and needs of children and youth in care, the limitations of its scope and legislative authority may have the unintended effect of denying young people more meaningful opportunities to resolve issues.

The **Ontario College of Social Workers and Social Service Workers (OCSWSSW)** is the regulatory body for social workers and social service workers in Ontario. Its primary duty is to serve and protect the public interest by regulating the practice of social work and social service work, and to govern its members. It is the only complaints body with the authority to conduct investigations with respect to child protection workers.

However, this authority is limited to those workers who are members of the College as well as non-members who unlawfully represent themselves as Social Workers or Social Service Workers. The focus of OCSWSSW member investigations is on a member's adherence to professional and ethical standards.¹⁰ While this focus addresses the competencies expected of a Social Worker or Social Service Worker and may lead to meaningful results for a complainant, it does not address substantive (i.e. child welfare-specific) content of members' actions in the context of carrying out their job.

The OCSWSSW is also duplicative of other processes. Under current rules, there is nothing preventing a complainant from lodging a complaint with the College against a child protection worker for actions taken in the context of a matter that is before the court. The complainant may

¹⁰ <http://www.ocswssw.org/en/professionalpractice.htm>

additionally lodge concurrent complaints through the ICRP and the CFSRB on procedural aspects of the same matter.

As with the other processes discussed in this submission, the OCSWSSW primarily addresses the concerns of adults and is not typically accessed by children and youth.

OACAS comments regarding Bill 42

OACAS understands the role of the Ombudsman is to investigate complaints, to initiate investigations and to hold government accountable for the effective delivery of publicly funded services. The focus of the Ombudsman's Office is on maladministration rather than on matters of policy. While the Ombudsman can issue reports and recommendations and engage with government officials to improve services, he cannot overturn decisions or enforce recommendations. Further, the Ombudsman's Office is a process of last resort that can be engaged only after other processes and remedies have been exhausted.

The Ombudsman's interest in extending the mandate of his Office to include Children's Aid Societies is well documented. The sponsors of Bill 42 have argued that the Ombudsman's independence and investigative authority are the missing ingredients in the current child welfare oversight and complaint landscape. They also argue that Ontario is out of step with other Canadian jurisdictions, where Ombudsman Offices have oversight over child protection services.

While OACAS acknowledges the limited investigative authority among existing complaints entities, Ontario cannot be compared with other provinces and territories with respect to Ombudsman oversight. Child protection services in those jurisdictions are delivered directly by government, and all government services fall within scope of Ombudsman oversight. This argument ignores the unique child protection service delivery model in Ontario.

Further, OACAS suggests that Bill 42, as drafted, does not promote the paramount purpose of the Child and Family Services Act. The most common complaints made about CASs to the Ontario Ombudsman (despite his Office having no mandate to address these complaints) relate to adult concerns. They include failure to investigate abuse allegations, inadequate/biased investigations, problematic apprehensions of children and lack of information for families.¹¹

Finally, Bill 42 would add Ombudsman oversight to the existing suite of oversight, influence and complaints entities without considering their role and value in promoting accountability in child welfare. In particular, Bill 42 fails to address the duplication of complaints processes that risks further confusion for the public about where to raise concerns. A new layer of oversight may also impose an obligation on child protection workers to respond to more investigations, which would mean less time with the children and families whose safety and wellbeing depend

¹¹ Ombudsman presentation at OACAS Consultation, March 2013

on their services. Moreover, with the addition of the Ombudsman as a forum to hear the concerns of adults, there is a risk of further delays to decisions that are essential to the wellbeing and permanency of children.

Conclusion

OACAS welcomes discussion of proposals to improve outcomes for children, youth and families. The Association recognizes that robust and transparent oversight as well as meaningful forums for raising concerns offer the appropriate balance to the child protection mandate and are essential to building public confidence in Children's Aid. Complaints processes, in particular, reflect the child welfare system's strengths and challenges, can help the field adapt and evolve, and can provide a meaningful way for CASs to engage with the public.

Children's Aid Societies are accountable to their local communities, to the government and to the public. They are subject to rigorous legislative oversight and conduct their unique statutory child protection mandate within a strict framework of legislation, regulations, service standards and prescribed timelines for service delivery.

OACAS acknowledges that Bill 42 was drafted with the intent of enhancing the accountability and transparency of Children's Aid Societies and improving outcomes for children and families. However, OACAS would not support adding Ombudsman oversight to the existing oversight landscape without thoroughly reviewing the role and value of all existing oversight, influence and complaints entities, as well as the potential impact on the ability of Children's Aid Societies to fulfill their legislative mandate to keep children safe.

Recommendations

OACAS makes the following recommendations to the Standing Committee on Government Agencies, as well as to government, to inform deliberations about Bill 42, *Ombudsman Amendment Act (Children's Aid Societies)*:

- That government conduct a thorough policy review of all existing oversight, influence and complaints bodies and processes that is anchored in the needs and best interests of children, identifies changes that may be needed to address gaps and add value, determines which entity is best positioned to address the problem, and ensures the necessary expertise in child and youth engagement;
- That such a review be holistic and conducted in the context of a robust dialogue regarding children's services in Ontario; and
- That government refrain from implementing Ombudsman oversight until such a review may take place.

While OACAS would not endorse Bill 42 as written, the Association would welcome and engage in a broader discussion about how to balance the interests of adults with those of children. If appropriate, OACAS would also welcome discussion about a possible role for the Ombudsman with respect to adult complaints, with the proviso that children's needs are the first priority.

Addendum

OACAS calls for a more comprehensive analysis of the current suite of legislated oversight, influence and complaints entities before additional statutory measures are added. This analysis would address the following questions and considerations:

- What are the guiding principles for the analysis?
 - How can the options ensure that the needs and best interests of children are at the centre of the solution?
- What changes are needed to address gaps and add value?
 - Investigation
 - Independent
- What entity is best positioned to address the problem?
 - Ombudsman
 - Another body
 - Different division of roles among existing bodies?
- How can change ensure that the necessary expertise in child and youth engagement is applied to the process of oversight and complaints?
- What solution achieves the goal of addressing gaps while removing redundancies and freeing more time for direct service to children and families?

Considerations

OACAS proposes that the following issues would need to be considered in reviewing options:

- Context of CASs:
 - their involvement with families and the degree to which involvement is voluntary or involuntary
 - that the minority of interventions result in apprehension of children
 - that although there are consistently high levels of inquiries/reports, fewer than half go to investigation
 - the availability of client feedback
- Balance of strengths-based approaches with the need to be intrusive occasionally in order to protect children at risk
- CAS legislative mandate for challenging, complex, sensitive work
- Published data from existing complaints processes (CFSRB, OCSWSSW, PACY) regarding CAS-related cases and frequency of resolution through settlement facilitation as compared to full complaints and process