

*OACAS Submission to the Standing Committee on General
Government, on Bill 8, Public Sector and MPP Accountability and
Transparency Act, 2014*

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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 the Standing Committee on General Government

Bill 8, Public Sector and MPP Accountability and Transparency Act, 2014

Executive Summary

Ontario Association of Children's Aid Societies (OACAS) acknowledges the introduction of Bill 8, *Public Sector and MPP Accountability and Transparency Act, 2014*. With this submission, made on behalf of its 44 member Children's Aid Societies, (CASs), OACAS offers comments regarding the intent of the bill as well as the scope and proposed approach of provisions directed to CASs. OACAS also requests clarification regarding certain provisions and recommends modest amendments to strengthen the bill.

OACAS supports the overall intent of Bill 8 to strengthen accountability of public services and enhance public confidence. In particular, OACAS supports vesting the Provincial Advocate for Children and Youth (PACY) with new powers of investigation, and agrees that aligning these powers with the paramount purpose of the Child and Family Services Act is the best way to ensure children and youth have their concerns heard. The introduction of this legislation may lead to strengthening the existing oversight and complaint resolution processes by making them more responsive and accessible to children and youth.

OACAS does note that this bill does not address the unique needs or experiences of Aboriginal children and youth in the care of Children's Aid Societies. The over-representation of Aboriginal children in care, as well as the long history of oppression against Aboriginal communities with respect to child welfare, must inform discussions to improve the system of oversight and complaints processes in Ontario.

Over the longer term, OACAS believes a broader and comprehensive review of existing oversight and complaint functions is needed to strengthen and streamline access for individuals to address concerns, minimize confusion about where to report concerns, reduce duplication and prevent unnecessary delays in important decisions for children, youth and families.

Children's Aid Societies, their provincial association and child protection services in Ontario

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 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.

The CFSA, along with supporting regulations, directives and standards, prescribes 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

OACAS understands that the overall intent of Bill 8 is to strengthen public sector accountability. Of particular relevance to Children's Aid Societies (CASs), the bill introduces an investigative function related to child welfare matters by expanding the mandate of the Provincial Advocate for Children and Youth (PACY) to:

- investigate and make recommendations related to **CAS services and services provided by residential licensees** where a CAS is the placing agency
- conduct individual and systemic investigations
- initiate investigation(s)

OACAS understands that Bill 8 intends to ensure that these powers are similar to those of the Ombudsman and are consistent with the paramount purpose of the CFSA, which is to promote the best interests, protection and wellbeing of children.

Regarding the approach that bill 8 proposes, OACAS understands that:

- the focus is on children and youth
- the new investigative role is distinct from the advocacy functions of PACY, with a separate administrative and procedural structure, while still informed by expertise from the current advocacy functions in PACY; and
- it is built upon, without duplicating, existing client complaint, oversight and accountability mechanisms

General Comments

OACAS supports the overall intent of Bill 8 to strengthen public sector accountability and enhance confidence in public services. OACAS knows that accountability and transparency are directly linked to public confidence in Children's Aid Societies, which is essential to their ability to deliver services that keep children safe.

The provisions found in *Schedule Ten, Amendments to the Provincial Advocate for Children and Youth Act, 2007*, are the primary focus of this submission. OACAS supports granting new investigative powers to the Provincial Advocate for Children and Youth (PACY) with respect to Children's Aid Societies and residential licensees where a CAS is the agency that places children and youth. In particular, OACAS welcomes the alignment of these provisions with the

paramount purpose of the Child and Family Service Act, which is to promote the best interests, protection and wellbeing of children.

OACAS also supports the intent of this legislation to enhance the ability of children and youth to be heard and have their concerns addressed. Existing oversight and complaints functions are largely accessed by adults and focused on their needs. While Bill 8 is a positive step, OACAS believes a broader and comprehensive review of all oversight and complaints functions is required to:

- ensure they are sufficiently responsive and accessible to children and youth
- strengthen and streamline them, reducing duplication and simplifying them for those who seek to access them
- increase the emphasis on problem-solving skills and resolution-based capacity, while still allowing for a more adversarial approach if needed
- prevent unnecessary delays in important decisions for children, youth and families.

Detailed Comments

1. Intent of the Legislation

OACAS welcomes the bill's intent to improve public accountability as well as its alignment with the paramount purpose of the Child and Family Services Act (CFSA). The CFSA and associated regulations comprise Ontario's only comprehensive legislative framework for children's wellbeing, which governs the services that keep vulnerable children safe.

OACAS also agrees that the Office of the Provincial Advocate for Children and Youth (PACY) is the logical place to situate an investigative role with respect to children and youth in the care of Children's Aid Societies as well as those placed by CASs in residential settings. The Office of PACY is the public body that children and youth in provincial care most often turn to, and which has the appropriate expertise with respect to supporting children and youth to be heard, to raise their concerns and to resolve issues. Bill 8 correctly recognizes that children and youth must have a voice in the services they receive and it puts them and their needs at the centre of investigations.

The introduction of this bill creates an opportunity to similarly shift the focus of other oversight and complaint functions to better address matters related to the care of children and youth. The Internal Complaints Review Panel (ICRP) and the Child and Family Services Review Board (CFSRB), in particular, could enhance their capacity and orientation to hear and address the concerns of young people. (See the Appendix for details on existing oversight and complaint functions.)

2. Proposed approach

Supports

OACAS supports the proposed approach to expanding the mandate of PACY to assume investigative powers. The creation of a distinct investigative team, with the appropriate skills and qualifications, would allow for the necessary separation of the advocacy role from the investigative functions and ensure the integrity of each one. OACAS believes the capacity for both individual and systemic investigations is key to improving services for children and youth.

OACAS also agrees that prior opportunities to resolve concerns, including other formal review processes, should be concluded before being able to access this new investigative function. In particular, the proposed exclusion of certain matters (including those already engaged in a process, or appeal, as well as matters eligible for review or already decided by the Child and Family Services Review Board) is logical and will help ensure that individuals seeking to raise concerns will know where to turn. Similarly, OACAS would support the Advocate having the discretion not to investigate a matter, particularly where another remedy may be available or in situations where the matter is seen to be trivial, frivolous or vexatious.

Clarity needed

OACAS suggests the proposed approach may be improved by clarifying the steps involved in the investigative and reporting processes. As drafted, the bill does not clearly delineate the sequence of steps for an investigation and subsequent reporting of findings. Moreover, the bill would benefit from greater clarity with respect to the alignment with and/or differences between the respective investigative functions of PACY and the Ombudsman.

3. Scope of proposed investigative functions

Support

While OACAS supports the alignment of the new investigative functions with existing accountability and complaints frameworks, the Association believes there is room to improve the legislation by aligning the scope of investigation with the full scope of advocacy services² of the Office of the Provincial Advocate for Children and Youth.

² http://provincialadvocate.on.ca/main/en/about/mandate_and_scope.cfm

Clarity needed/amendments proposed

As drafted, the investigative functions of PACY would be limited to CAS services or services provided by residential licensees where CAS is the placing agency. As such, some of the most vulnerable children and youth would not be able to access PACY's investigative function. This narrow scope may have the unintended consequence of creating the perception of separate classes of children – those whose concerns are eligible to be investigated by PACY and those whose concerns are not.

Bill 8, as drafted, excludes children living in:

- mental health/secure settings
- youth justice settings
- provincial and demonstration schools
- single child-specific places; as well as
- youth placed in developmental services settings

The narrow scope may further lead to situations in which PACY can investigate the concerns of some, but not all, of the children living in the same residential setting simply because a CAS was not the placing agency for all children.

AREAS THAT REQUIRE FURTHER CLARIFICATION & SUMMARY OF PROPOSALS FOR AMENDMENTS

OACAS asks for further clarification and proposes modest amendments regarding the following elements of Bill 8, to better appreciate its potential impact on children, youth and Children's Aid Societies and assess whether, as drafted, it will achieve its legislative intent.

1. **Scope** – OACAS believes the scope of investigative powers should mirror the full scope of advocacy services provided by the Office of the Provincial Advocate for Children and Youth (PACY). PACY should be able to investigate matters pertaining to all children for whom the Office has an advocacy mandate ('youth in state care and the margins of state care'³)
2. **The path to investigation services** – OACAS seeks clarification regarding the path for seeking access to investigative services from PACY. The draft legislation indicates that an individual would first need to access the Internal Complaint Review Panel (ICRP) before proceeding to an investigation through PACY.

³ From the Mission Statement of the Office of the Provincial Advocate for Children and Youth (http://provincialadvocate.on.ca/main/en/about/mandate_and_scope.cfm)

OACAS observes that no equivalent step is required by the Child and Family Services Review Board (CFSRB). Individuals who access the CFSRB, predominantly adults, are able to have their concerns heard directly. While the approach taken by Bill 8 is consistent with that of the Ombudsman's Office, as drafted the bill may inadvertently lead to adults receiving an unfair advantage as compared with young people with respect to investigations.

3. **Support for children/youth throughout the investigation** - OACAS seeks clarification as to how children and youth engaged in the investigative process would receive the necessary support, in light of the intention to separate the advocacy function from the investigation function of the Office.
4. **Appeal of jurisdiction** - As drafted, PACY is able to make an application to divisional court in the event of a challenge to its jurisdiction to investigate a particular matter. OACAS seeks clarification that Children's Aid Societies would have the same right to make such an application.
5. **Application of privacy provisions**- OACAS seeks clarification as to whether privacy protection provisions in current PACY legislation would apply in the draft legislation, as well as the extent to which these provisions align with those of the Ombudsman Act.
6. **Sequence of steps in investigation and reporting process** - Greater clarity is needed regarding the sequence of steps that PACY would take in the course of investigating and reporting on a given matter. As drafted in the legislation, the Advocate could issue a public report as a first step ("at a time and in a form that the Advocate considers appropriate"). It is unclear whether the subject of an investigation and report may be able to provide a response only after the report has been made to the Legislative Assembly.

Recommendations

OACAS makes the following recommendations to the Standing Committee on General Government, as well as to government, to inform deliberations about Bill 8, *Public Sector and MPP Accountability and Transparency Act, 2014*.

- That the scope of investigative powers mirror the full scope of advocacy services provided by the Office of the Provincial Advocate for Children and Youth (PACY). Children and youth receiving other provincial services, as well as those placed in residential settings by non-CAS agencies, should be equally eligible to access PACY's investigative functions.
- That government conduct a thorough policy review of all existing oversight and complaints functions, anchored in the needs and best interests of children, which identifies changes that may be needed to address gaps and add value.
- That such a review be comprehensive and conducted in the context of a robust dialogue regarding all children's services in Ontario.

APPENDIX

Details of Existing Complaints Processes

The **Internal Complaints Review Panel (ICRP)** is a process that each CAS is required by regulation^{4[2]} to have in place to address the written complaints of people seeking or receiving CAS services⁵. 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).

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.)

In addition to its adjudicative mandate with respect to certain CAS decisions (see above), the **CFSRB** is mandated to review complaints and 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 a residential placement.

^{4[2]} CFSA Regulation 494/06

⁵ Refers to children, parents, caregivers

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