



Ontario Association of
Children's Aid Societies

SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL POLICY

Bill 188, *Supporting Children's Futures Act, 2024*

MAY 14, 2024

About the Ontario Association of Children's Aid Societies

The Ontario Association of Children's Aid Societies (OACAS) is a provincial membership organization representing 47 of Ontario's 50 mandated children's aid societies and Indigenous Child and Family Well-Being Agencies (child welfare agencies), as well as 2 pre-mandated Indigenous Child and Family Well-Being Agencies. We support members by providing practice tools, educational and training opportunities, as well as communication and advocacy supports to help bring positive change to the Ontario child welfare system and improve outcomes for children, youth, and families.

Introduction

OACAS welcomes the opportunity to provide comments on Bill 188, *Supporting Children's Futures Act, 2024* (Bill 188) to the Standing Committee on Social Policy (Standing Committee). This submission is informed by feedback from our members and youth with lived experience in the Ontario child welfare system. We are grateful to everyone who shared their reflections and insights.

Bill 188 seeks to amend the *Child, Youth and Family Services Act, 2017* (CYFSA), among other Acts, to improve the safety, well-being, and privacy of children and youth in care and other licensed out-of-home settings. Alongside our members, we commend the province for taking steps to strengthen safeguards in the child and youth services sector. We remain committed to working with Ontario towards a system that consistently delivers high-quality, trauma-informed, culturally relevant care.

While OACAS and our members support Bill 188 in principle, there are key considerations that we would like to bring to the attention of the Standing Committee. In this submission, we outline key considerations related to:

- Indigenous child and family services;
- Child and youth rights;
- Family- and community-based placements; and,
- Sustainability of the child welfare sector.

The CYFSA does not differentially regulate child welfare agencies from outside paid resources (i.e., for-profit operators), nor differentially oversee placement types (i.e., foster home, kinship, subsidized customary care, group home, etc.) As a result, the CYFSA functions as a blunt instrument; the proposed amendments in Bill 188 will likely have unintended negative consequences on the availability of family- and community-based placements and the sustainability of the child welfare sector.

Legislative and regulatory reform is not the only way to bring positive change to the Ontario child welfare system. Child welfare agencies work in partnership with community-based

organizations and service providers to serve children, youth, and families in their community. Their capacity to ensure children, youth, and families get the right support, at the right time, close to home is tied to the overall strength and health of the social infrastructure in their communities. We urge Ontario to take concrete, meaningful actions to bolster social infrastructure in communities across the province so child welfare agencies have the tools and resources available to support children, youth, and families facing challenges.

Key Considerations & Analysis

Indigenous Child and Family Services

First Nations, Inuit, and Métis communities have inherent jurisdiction over child and family services, which has been recognized and affirmed through *An Act respecting First Nations, Inuit and Métis children, youth, families and communities* (the Act). The Act is part of the Government of Canada's ratification of the United Convention on the Rights of the Child and commitments to implementing the United Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission of Canada's Calls to Action.

We urge the Standing Committee to explore opportunities to ensure Bill 188 truly aligns with the Act and upholds the inherent jurisdiction of Indigenous communities as it relates to child and family services. The language in Bill 188 regarding notices and information sharing with First Nations, Inuit, and Métis communities (or designated representatives) is not consistent. In some sections, information "may" be shared and in others information "shall" be shared.

If passed with this inconsistent language, there may be instances where Indigenous communities and/or designated representatives do not receive critical information related to the health, safety, or well-being of an Indigenous child or young person receiving services under the CYFSA. This is unacceptable. We urge the Standing Committee to closely examine Bill 188 and take steps to ensure that the proposed changes truly uphold the rights of First Nations, Inuit, and Métis children, youth, families, and communities.

We also encourage the Standing Committee to explore ways to integrate Indigenous-specific recommendations from recent inquests and reports, including [Devon's Principle](#) and [Jordan's Principle](#).

Child and Youth Rights

Young people receiving services under the CYFSA have rights that must be respected. During our engagement session with young people, OACAS heard that the current rights outlined in the CYFSA are not being consistently upheld. Sadly, this is not the first engagement session where young people have called attention to instances where their rights have been infringed upon.

It is important young people are aware of their rights and the complaints mechanisms available to them so they can ensure their voices are heard. While we applaud Ontario for taking steps through Bill 188 to clarify when and how children and youth are informed about the existence of the Office of the Ombudsman (the Ombudsman) and their role, more needs to be done to ensure child and youth rights are upheld.

We strongly encourage the Standing Committee to add a provision to Bill 188 that would ensure young people are informed of and understand relevant tools and resources available through the Ombudsman. The provision must require child welfare agencies or a licensee to inform young people of culturally relevant and identity-affirming resources available to them. For example, there are specialized teams at the Ombudsman, including the Indigenous Circle; Black Children, Youth and Families Table; and the 2SLGBTQIA+ Outreach Group.

Indigenous, Black, racialized, and 2SLGBTQ+ children are disproportionately overrepresented in the Ontario child welfare system. This overrepresentation, especially of Indigenous and Black children and youth, stems from systemic colonialism, racism and oppression, over-surveillance, over-policing, and over-reporting. These systems of power and privilege persist within the Ontario child welfare system. It is critical that Indigenous, Black, racialized, and 2SLGBTQ+ children and youth are informed of inclusive and identity-affirming resources available to them.

Young people should not just be informed of the function of the Ombudsman. They should also be informed of relevant resources and tools available *within* the Ombudsman that might help ensure their unique needs and concerns are addressed.

We acknowledge that Ontario is trying to bolster the capacity of children and youth to exercise their rights by clarifying when and how children and youth are informed about the Ombudsman. But it is important to keep in mind that the mandate of the Ombudsman is limited. The Ombudsman can investigate and resolve complaints; however, complaint resolution should not be conflated with advocacy. It is beyond the purview of the Ombudsman to act as an advocate for children or youth. If the provincial government wants to truly ensure young people have the support they need to exercise their rights, they must do more.

We urge the Standing Committee to explore opportunities to enhance Bill 188, so the rights of children and youth are deeply embedded. Further, we urge members to work with their colleagues in the Ontario Legislative Assembly to expand the mandate of the Ombudsman and/or establish an advocacy mechanism for young people who need support in exercising their rights.

Further Considerations

Bill 188 introduces enhanced oversight and enforcement tools, some of which provide MCCSS with decision-making powers that will directly impact young people. For example, when there is a change in management. Children and youth have a right to be told why and how decisions affect them (to the extent possible given their age and maturity). However, Bill 188 does not require young people to be informed about decisions that will directly impact them and their care. We urge the Standing Committee to explore ways to consistently embed child and youth rights in Bill 188.

Additionally, when reviewing the work underway to modernize and standardize safeguards in the child and youth services sector, OACAS and members observed that MCCSS also [approved a suite of regulatory amendments](#) to O. Reg 156/18: General Matters Under the Authority of the Minister. MCCSS has introduced the use of humiliating, derogatory and racist language as a prohibited method of discipline. This is a step in the right direction; however, it is deeply concerning that the use of homophobic, bi-phobic, transphobic, and/or cisheteronormative language is not directly prohibited as well.

This oversight reflects and contributes to the persistence of hetero-cisnormativity in the child and youth services sector. Amidst rising anti-2SLGBTQ+ hate, especially anti-trans hate, it is critical we take approaches to safeguarding child and youth rights that apply an inclusive, intersectional lens.

Family- and Community-Based Placements

OACAS and our members recognize the critical role a comprehensive legislative and regulatory framework plays in the delivery of high-quality care. We recognize that the proposed amendments in Bill 188 seek to improve the experiences of young people in licensed out-of-home settings by introducing enhanced oversight and enforcement tools designed to promote compliance. However, Bill 188 will likely have unintended negative consequences on family- and community-based placements (i.e., foster, kin, subsidized customary care).

Members have cautioned that the enhanced oversight and enforcement tools, particularly administrative penalties, will likely have a chilling effect on the willingness of family, kin, and community members to step forward as alternate or foster caregivers and welcome a child or young person into their home. Additionally, well established and trusted foster homes that child welfare agencies have consistently worked with for years may close.

OACAS and our members are deeply concerned about how Bill 188 will impact racialized caregivers. Racialized caregivers, especially Indigenous and Black caregivers, continue to be subject to over-surveillance, over-policing, and over-reporting in the child and youth services sector. Keeping children and young people in their communities and surrounded by

loved ones is a priority for our member agencies. It is a critical part of our collective efforts to address the overrepresentation and disparities in outcomes for Indigenous, Black, racialized, and 2SLGBTQ+ children and youth.

Child welfare agencies work tirelessly to prioritize family- and community-based placements. Members fear that fewer family members, kin, alternative caregivers, and community members will be willing to step forward when they are needed. Members observed a decrease in the availability of family- and community-based placements following the implementation of the *Quality Standards Framework*. They fear Bill 188 will have a compounding effect and shrink an already scarce pool of placement options.

The risk of a chilling effect of legislative and regulatory changes is caused, in part, by the totalizing framework of the CYFSA. The CYFSA does not differentially regulate child welfare agencies from outside paid resources (i.e., for-profit operators), nor differentially oversee placement types (i.e., foster home, kinship, subsidized customary care, group home, etc.). As a result, the CYFSA functions as a blunt instrument and all placement types and service providers are treated the same, despite providing different types of care in different settings.

There is an urgent need for a more sophisticated, nuanced legislative and regulatory framework that promotes compliance and prioritizes continued connections to kin, culture, and community. To learn more, we encourage the Standing Committee to review the [OACAS written submission on licensed out-of-home care](#). (The written submission was provided to MCCSS in response to consultations with the public and stakeholders.)

Children and youth with complex needs (i.e., social, emotional, developmental, mental health, addictions, etc.) acutely feel the impacts of limited placement options. In dire circumstances where agencies cannot find an appropriate placement, they are forced to pursue temporary, supervised placements in hotels or motels, or even in their offices, for children and youth with complex needs. These are placement options of last resort.

Placements options are becoming increasingly scant due to the cost-of-living and housing crisis and the untenable pressures recent regulatory changes (i.e., *Quality Standards Framework*) have placed on licensees. Bill 188 will likely have a compounding effect and undermine efforts in the child welfare sector to keep children and youth in their communities, surrounded by loved ones.

While OACAS and our members recognize the importance of compliance measurement and accountability mechanisms, the unintended negative consequences Bill 188 will likely have on family- and community-based placements cannot be overlooked.

It is disappointing that the Ontario government is not taking steps through Bill 188 towards a more sophisticated, nuanced legislative and regulatory framework that balances compliance measurement and continued connections to kin, culture, and community. Part of improving quality of care for children and youth means prioritizing family- and community-based placements, like kinship and foster care. It is critical that the Ontario government address barriers to family- and community-based placements, not reinforce them.

We strongly urge the Standing Committee to work with their colleagues in the Ontario Legislative Assembly towards a legislative and regulatory framework that keeps the needs of children, youth, and families at the centre.

Further Considerations

Should Bill 188 pass, members stressed the importance of adequate education and training of licensing inspectors. The overrepresentation and disproportionality of racialized communities within the Ontario child welfare system, particularly Indigenous and Black children, youth, and families, results from systemic colonialism, racism and oppression, over-surveillance, over-policing, and over-reporting. It is critical that the enhanced oversight and enforcement tools in Bill 188 are not implemented in a way that exacerbates the continued over-surveillance, over-policing, and over-reporting. If the enhanced oversight and enforcement tools are not utilized in an inclusive and trauma-informed way, the availability of family- and community-based placements may be further jeopardized.

Additionally, Bill 188 proposes legislative amendments to the CYFSA that would restrict access and disclosure of records held by a child welfare agency. Exceptions to the restrictions include when the individual requests access to their file; MCCSS requires access for research, compliance, planning and delivery of services; and as set out in regulations. Sometimes, direct service staff use past files to map family and extended kin networks and support efforts to prioritize family- and community-based placements. The Standing Committee should consider introducing an exception in Bill 188 that would ensure child welfare agencies are able to access records for service planning purposes.

Sustainability of the Child Welfare Sector

On behalf of members, OACAS would like to highlight how proposed amendments in Bill 188 could impact the financial sustainability and operations of child welfare agencies, particularly those related to administrative penalties and information sharing.

In 2016, the then Ministry of Children and Youth Services brought together a panel to conduct [a system-wide review](#) of Ontario's child and youth out-of-home care system. In their review, the panel outlined concerns related to the rate setting methodology, the rate

review process, and the use of special rate agreements for out-of-home placements. The panel also observed significant inconsistencies with respect to per diem rates.

With respect to Bill 188, members have cautioned that organizations may begin to account for potential penalties into program and per diem rates. As a result, child welfare agencies may encounter increased rates and, in turn, additional fiscal strain.

The current funding model does not equitably distribute funding, leaving some agencies better equipped to navigate fiscal pressures than others. Heightened financial strain may undermine the financial stability of agencies and, in turn, their ability to care for children, youth, and families in their communities. OACAS continues to urge Ontario to engage the child welfare sector in the timely development of a funding model that promotes sustainable, equitable funding.

Bill 188 also comes with increased information sharing requirements. For example, Bill 188 introduces new subsections 250(1) to (1.3) which provide for reporting certain matters to a Director. Enhanced information sharing requirements will come with an increase in administrative tasks and, in turn, elevate workload pressures. Members have emphasized that this will compound workload pressures associated with recent legislative and regulatory changes (i.e., *Quality Standards Framework, Ready, Set, Go*). Bill 188 will likely exacerbate persisting pressures that undermine the capacity of staff to deliver supports and services and spend time forming meaningful connections with children, youth, and families. We urge members of the Standing Committee to explore opportunities to reduce administrative tasks and relieve workload pressures.

Additionally, we recommend the Standing Committee consider building a phased implementation timeline into Bill 188. The successful operationalization of Bill 188 requires education and training, development of resources and guidance documents, case management system updates, and so on.

Conclusion

OACAS and its members support Bill 188 in principle; we are encouraged to see the province taking steps to improve the experiences of children in and from care. However, we hope the Standing Committee will carefully consider the concerns outlined in this submission related to Indigenous child and family services; child and youth rights; family- and community-based placements; and the sustainability of the child welfare sector.

Currently, the CYFSA does not differentially regulate child welfare agencies from outside paid resources (i.e., for-profit operators), nor differentially oversee placement types (i.e., foster home, kinship, subsidized customary care, group home, etc.). There is an urgent need for a legislative and regulatory framework that is sensitive to the different approaches to care and care settings. Unfortunately, Bill 188 does not bring us closer to a sophisticated,

nuanced legislative and regulatory framework. We strongly urge the province to consider future amendments to the CYFSA that will strike the balance between compliance, accountability, and measures that will promote continued connections to kin, culture, and community.

While legislative and regulatory reform are a critical part of the work to bring positive change to the Ontario child welfare system, this is not the only tool available to the Ontario government. There is more work to be done.

Child welfare agencies are part of the network of community-based organizations and service providers that promote the health, well-being, and safety of children, youth and families across the province. Agencies ensure that they receive short- or long-term support so they can thrive and succeed. The capacity of the child welfare agencies to provide vital supports and services is linked to the resources available to them internally (i.e., funding, human resources) and externally (i.e., community partners, availability and capacity of local service providers). In the [OACAS 2024 Pre-Budget Submission](#), we outline the urgent need for the Ontario government to take concrete actions to ensure child welfare agencies are well-placed to support children, youth, and families.

OACAS and our members look forward to continuing to work alongside Ontario towards a system that ensures all young people grow and thrive through the consistent delivery of high-quality, trauma-informed, culturally relevant care.

Should Bill 188 pass, OACAS and its members strongly encourage the province to engage the child welfare sector to discuss how the proposed changes can be operationalized and resourced in a way that will keep the needs and best interests of children, youth and families at the centre of our work.

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