



**Submission to the Standing Committee
on Social Policy regarding Bill 188,
*Supporting Children's Futures Act, 2024***

**Paul Dubé
Ombudsman of Ontario**

May 2024

Overview

The Standing Committee on Social Policy is currently considering Bill 188, *An Act to amend the Child, Youth and Family Services Act, 2017 and various other Acts*, also known as the *Supporting Children's Futures Act, 2024*. This Bill, if passed, would amend the *Child, Youth and Family Services Act, 2017 (CYFSA)* by creating new licensing and reporting requirements, establishing new offences for breaches of the Act, and strengthening privacy safeguards for individuals who previously received child protection services.

I commend the government's efforts to strengthen safeguards for children and youth receiving child protection services. In particular, I am pleased to see that the government is calling for the *CYFSA* to state that a child in care has a right to be informed, in language suitable to their understanding, of my Office. This change will help to ensure that children and youth in care are aware of their right to file a complaint with my Office.

However, the proposed amendments to the *CYFSA* do not reflect several issues that I have previously brought to the attention of the Ministry of Children, Community and Social Services (the "Ministry"). I have prepared this submission to reiterate these important suggestions, and to share my Office's observations and expertise regarding the provision of child protection services. I am confident that this will assist the Ministry in its efforts to further promote oversight and accountability for vulnerable children and youth.

The Ombudsman's jurisdiction and role in improving services to children and youth

The Ombudsman is appointed under the *Ombudsman Act* as an independent and impartial Officer of the Ontario Legislature. In this role, the Ombudsman has the authority to review and formally investigate the administrative conduct of more than 1,000 public sector organizations, including provincial government organizations, municipal sector entities, school boards, and publicly funded universities. Since 2019, the Ombudsman's mandate also includes reviewing complaints about children's aid societies, residential licensees, and secure treatment facilities that provide services to children and youth under the *Child, Youth and Family Services Act, 2017*, as well as complaints about the provision of French language services under the *French Language Services Act*. When problems are identified, the Ombudsman can make recommendations to resolve an issue, improve processes, and strengthen governance and accountability.

The Ombudsman continues certain functions of the former Office of the Provincial Advocate for Children and Youth. Specifically, the Ombudsman’s Office was given the authority to investigate “any matter” concerning services to a child provided by a children’s aid society or a licensed residential service provider. Ontario Regulation 80/19 also provides that my Office is responsible for receiving and reviewing reports related to the death or serious bodily harm of a child who has received services under the *CYFSA*, a function formerly performed by the Provincial Advocate for Children and Youth.

Since then, the Ombudsman’s Office has provided assistance to children, youth and families in more than 7,700 cases about young people in care or receiving services from children’s aid societies, and nearly 1,000 cases about youth justice centres. In addition to assisting thousands of children with issues related to child welfare, our Office also provides outreach and services to children in provincial and demonstration schools, and oversees a wide range of services for children in the social services, health and education sectors.

Many of these cases are dealt with by a unit at my Office with specialized expertise in dealing with children and youth issues. The function of the Children and Youth Unit is to promote and protect the rights of children and youth in care by:

- Handling complaints from young people, families and the public
- Conducting investigations when necessary
- Monitoring and administering the Death and Serious Bodily Harm reporting system
- Meeting with young people in care to tell them about their rights
- Giving presentations to service providers with obligations to children and families under the *CYFSA*
- Developing communication materials and giving presentations to community groups and professionals who help young people
- Providing advice and recommendations to government

We have also created four specialized teams – the Indigenous Circle; the Black Children, Youth and Families Table; the 2SLGBTQIA+ Outreach Group; and the Provincial and Demonstration Schools Outreach Group – to lead presentations and outreach to children, youth and families who are members of these groups.

Our goal is to improve the experiences of young people and families receiving child welfare services in Ontario by ensuring they are treated fairly.

Informing children and youth of the Ombudsman

In August 2023, my Office provided a submission to the Ministry of Children, Community and Social Services regarding its five-year review of the *CYFSA*.¹ I made nine proposals in this submission that addressed legislative as well as regulatory changes, two of which are reflected in Bill 188. In this submission to the Standing Committee, I will be discussing six proposals, which I believe justify amendments to Bill 188.

At present, service providers have obligations under the *Ombudsman Act* to provide information to children about our Office, but there are no corresponding rights in the *CYFSA* for children to be told about the Ombudsman's Office. However, most service providers and young people rely on the *CYFSA* as the definitive source of rights for young people in care, not the *Ombudsman Act*.

I am pleased to see that the government is amending the *CYFSA* to state that a child in care has a right to be informed, in language suitable to their understanding, of the Ombudsman, the Ombudsman's functions, and how the Ombudsman may be contacted. Going forward, children's aid societies and residential licensees will also be required to provide information about my Office to a child or young person at the following times:

1. When the children's aid society or residential licensee begins to provide a service to the child or young person.
2. When the child or young person makes a complaint under the *CYFSA* and when requesting a further review of the complaint once the review by the children's aid society or residential licensee is completed.
3. At any other times as is considered necessary, in the opinion of the children's aid society or residential licensee, to ensure that the child or young person understands this information.
4. At such other prescribed times.

I agree with the Ministry that these changes will strengthen the ability of children and youth in care to exercise their rights, improve the quality of services they receive, and enhance children's aid societies' and out-of-home care licensees' awareness of their

¹ Ombudsman of Ontario, *Submission to the Ministry of Children, Community and Social Services regarding the Five Year Review of the Child, Youth and Family Services Act, 2017* (July 2023). [*The Ontario Ombudsman's submission regarding the CYFSA*], online: <https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2023/submission-regarding-the-five-year-review-of-the-child,-youth-and-family-services-act,-2017>.

obligations.² I commend the effort to implement my previous proposals, which will help to ensure that children and youth are aware of their right to file a complaint with my Office.

Enhanced safeguards for children and youth

I am also pleased to see that Bill 188 will also make a number of other positive changes to the *CYFSA* that will enhance safeguards for children and young persons in care, such as establishing new reporting requirements, new offences for breaches of the Act, and additional licensing requirements. These changes will strengthen the Ministry's oversight of children and young persons in care and will encourage compliance with the *CYFSA*.

For example, the *CYFSA* will be amended to require that a residential licensee, a person employed or otherwise engaged by a licensee (including a foster parent), a children's aid society (including a child protection worker), a child's probation officer, and any prescribed person has a duty to report a suspicion that there is an immediate threat to the health, safety or well-being of a child receiving residential care to the Ministry. This change is supportive of previous recommendations made by the Provincial Advocate for Children and Youth. As I noted in my previous submission to the Ministry, a lack of external independent oversight of the daily activities, discipline, and quality of care received by children in care is believed to contribute to their abuse.³

Enhanced privacy protections for children and youth

At present, the Act does not explicitly restrict access or disclosure of personal information that is held by a children's aid society or service provider once a child or youth is no longer eligible to receive child protection services. If Bill 188 comes into force, Part X of the Act, "Personal Information", would be amended to restrict children's aid societies and prescribed persons and entities from using and disclosing certain personal information they had collected about an individual once the individual is no longer eligible to receive continued care and support pursuant to an agreement made under the *CYFSA* or prescribed services. The Act would set out certain exceptions to these restrictions.

² Ministry of Children, Community and Social Services, "Proposed changes to the *Child, Youth and Family Services Act, 2017* to improve the access for children and youth in care to information about the Office of the Ombudsman", *Ontario's Regulatory Registry* (17 April 2024), online: <<https://www.ontariocanada.com/registry/view.do?postingId=47176&language=en>>.

³ *The Ontario Ombudsman's submission regarding the CYFSA*, *supra* note 1, citing Law Commission of Canada, "Restoring Dignity: Responding to Child Abuse in Canadian Government Institutions" (Ottawa: Minister of Public Works and Government Services, 2000) at 5-6.

Under the *Ombudsman Act*, a person who is subject to Part X of the *CYFSA* is not prevented by any provisions in that Part from providing personal information to the Ombudsman when the Ombudsman requires the person to provide evidence or to be examined under oath.⁴ Accordingly, these proposed amendments would not prevent my Office from requiring the disclosure of personal information that is relevant to an investigation under the *Ombudsman Act*. I applaud the Ministry's stated goal of enhancing privacy protections for children and youth with previous child protection involvement, while continuing to allow my Office to obtain relevant evidence and to interview witnesses in the course of an investigation.

Enhanced rights for young people seeking Voluntary Youth Services Agreements

While Bill 188 makes many important changes to the *CYFSA*, it does not address key concerns that I have identified with respect to how youth can access voluntary services from children's aid societies.

On January 1, 2018, the Ontario government raised the age of protection from 16 to 18 years old. Young people in this age range can enter into Voluntary Youth Services Agreements (VYSAs) with children's aid societies if they are in need of protection and wish to accept protection services. When the change was introduced, the then-Minister observed that, previously, youth in this age group were referred to community services, like shelters. Raising the age of protection to 18 was intended to ensure these children would be able to access services that keep them safe and provide them with the ability to reach their full potential.

However, my Office continues to hear that many youth who seek assistance from children's aid societies are refused services. Since 2019, we have received 90 complaints relating to 30 different children's aid societies raising various serious concerns about VYSAs. In my recently published report, *Rights Unrecognized: Mia's Story*, I detailed the issues 16-year-old "Mia" faced when she tried to access voluntary child protection services.⁵ Even though she specifically asked a children's aid society to help with a placement and re-enrolling in school, Mia never received the support she sought. She was not provided with a foster placement, and at one point it was

⁴ s.14(1.2) and s 19(3.1). Under section 19(1) of the *Ombudsman Act*, the Ombudsman may require an officer, employee or member of any public sector body to produce evidence relating to any matter under investigation that may be in their possession or control. Under section 19(2), the Ombudsman may summons a complainant; an officer, employee, or member of the public sector body; and any other person who, in the Ombudsman's opinion, is able to provide information relating to any matter that is being investigated. Section 14(1.2) provides that these provisions apply to Ombudsman investigations of children's aid societies and residential licensees as if those entities were public sector bodies.

⁵ Ontario Ombudsman, *Rights Unrecognized: Mia's Story* (April 2024), <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2024/rights-unrecognized-mia%E2%80%99s-story>>.

suggested that she could “stay in a shelter.” My report found the society’s actions “unreasonable and wrong” under the *Ombudsman Act* and made 20 recommendations for improvement, all of which the agency has accepted.

As I previously highlighted in my submission to the Ministry, there should be enhanced access to complaint and oversight mechanisms for vulnerable youth who are not offered services by children’s aid societies. To better protect the interests of vulnerable youth, children’s aid societies should be required to inform youth of their right to complain to my Office if the society does not offer them protection services. Youth who are turned down are often in a precarious family situation and may have little awareness of their rights and procedural options. Requiring children’s aid societies to inform them of my Office would further support child and youth rights and ensure greater accountability.

Proposal 1

Section 77 of the CYFSA should be amended to provide that all children’s aid societies must inform a youth who is turned down for a VYSA about the existence and role of the Office of the Ombudsman of Ontario and of how the Office of the Ombudsman of Ontario may be contacted.

The proposed amendment to Bill 188 could read as follows:

The *CYFSA* shall be amended by adding the following section: **77 (8)** Where a child wants to enter into an agreement under this section and a society decides not to enter into an agreement, the child shall be informed, in language suitable to their understanding, of the existence and role of the Ombudsman of Ontario and of how the Ombudsman of Ontario may be contacted.

“Ready, Set, Go” program

Currently, young people eighteen years of age and older (up to age 23) may receive continued care and support from a children’s aid society as part of the newly introduced “Ready, Set, Go” program. This program is designed to assist young people who are leaving the care of a children’s aid society and transitioning to adulthood.

As with VYSAs, my Office’s experience suggests that when children’s aid societies terminate this type of support for a young person, the young person feels they have nowhere to turn. In one case, a young person expressed hope that the Office of the Children’s Lawyer would be notified any time a children’s aid society seeks to terminate this type of support, as they felt their lawyer would have taken action if they had known about the situation. However, the Office of the Children’s Lawyer is not able to provide legal services to anyone over 18.

Again, there is a need for enhanced access to complaints and oversight mechanisms for vulnerable youth that are denied service by children’s aid societies. Any time a young person asks for or a children’s aid society offers or enters into a “Ready, Set, Go” agreement, or seeks to terminate a “Ready, Set, Go” agreement, they should be required to advise the youth about the existence of the Ontario Ombudsman and how to contact the Ombudsman if they have any concerns or complaints.

Proposal 2

Section 124 of the CYFSA should be amended to provide that all children’s aid societies must inform a youth who requests, is offered, or enters an agreement under this section, or who has an agreement under this section terminated, about the existence and role of the Office of the Ombudsman of Ontario and of how the Office of the Ombudsman of Ontario may be contacted.

The proposed amendment to Bill 188 could read as follows:

The *CYFSA* shall be amended by adding the following section: **124 (2)** Where a person requests, is offered, or enters into an agreement under subsection (1), or the society terminates the agreement, the person shall be informed by the society of the existence and role of the Ombudsman of Ontario and of how the Ombudsman of Ontario may be contacted.

Expanding access to the Ombudsman

I also encourage the Standing Committee to address a gap in the *Ombudsman Act* that prevents some children and youth receiving services under the *CYFSA* from being able to have their concern addressed by my Office.

Under the now-repealed *Provincial Advocate for Children and Youth Act, 2007*, the Provincial Advocate was entitled to receive and respond to complaints from children and youth who were seeking or receiving services provided or funded under the *CYFSA*. The Provincial Advocate’s investigative authority was more restricted and only extended to children receiving services from children’s aid societies and residential licensees they had been placed with by a children’s aid society. Under the *Ombudsman Act*, the Ombudsman’s investigative mandate extends to services provided by children’s aid societies and residential licensees. However, the Ombudsman has no broader authority to address complaints about children and youth seeking or receiving services provided or funded under the *CYFSA*.

As it stands, the *Ombudsman Act* precludes my Office from investigating and making recommendations when children have concerns about unlicensed facilities, unlicensed agencies, or agencies delivering non-residential mental health or developmental services. Children and youth receiving services from such organizations cannot generally have their concerns reviewed by my Office and are unfortunately denied access to the effective oversight mechanism we could otherwise provide. While the *Ombudsman Act* provides that such agencies may be prescribed by regulation as coming within the Ombudsman’s authority⁶, this has never occurred. It would be clearer, more consistent, and support the rights of children and youth if the Ombudsman’s mandate in this area were simply expanded.

This oversight gap should be fixed and the right to contact my Office should exist for all children and youth receiving services under the *CYFSA*.

To accomplish this, Bill 188 could be revised to include a consequential amendment to the *Ombudsman Act* enhancing the Ombudsman’s existing authority to protect the rights of children and youth.

Proposal 3

Bill 188 should be revised to include a consequential amendment to the *Ombudsman Act* to expand the Ombudsman’s mandate respecting children and youth to include all services provided or funded under the *CYFSA*, including those provided by unlicensed facilities, unlicensed agencies, and agencies delivering non-residential mental health or developmental services to children.

The proposed amendment to the *Ombudsman Act* could read as follows:

Section 14 (1.1)(c) shall be amended by deleting the words “prescribed by regulations made under clause (1.4)(a)”

Sections 14 (1.3) and (1.4) shall be amended by deleting reference to clause (a).

Services in French

My Office also previously highlighted concerns with how child protection services are provided to Francophone children and youth. My Office’s experience has revealed that these young people do not always receive services under the *CYFSA* in a manner that affirms the linguistic rights and interests of the French-speaking population of Ontario.

⁶ *Ombudsman Act*, RSO 1990, c O.6, s. 14 (1.1) (c).

For example, my Office received a complaint that a French-speaking young person was denied a placement in the Francophone unit of a youth custody facility and instead placed in the Anglophone unit. He was also enrolled in a classroom where only English was spoken, a language the young person was not as confident in.

Wherever possible, Francophone children should receive services under the *CYFSA* that reflect their linguistic and cultural heritage. The *CYFSA* should explicitly recognize that the *French Language Services Act* provides the French language with a special status in Ontario, and this status should be taken into account in all aspects of the provision of services. Further, the importance of preserving the linguistic identity of children and youth receiving services under the *CYFSA* should be recognized in the preamble of the Act.

Proposal 4

The preamble of the *CYFSA* should be amended to affirm the Legislative Assembly’s recognition of the contribution of the cultural heritage of the French-speaking population and its wish to preserve it for future generations.

The proposed amendment to Bill 188 could read as follows:

The *CYFSA* shall be amended by adding the following section to the preamble:
With respect to French-speaking children, the Government of Ontario acknowledges the following:

The Legislative Assembly recognizes the contribution of the cultural heritage of the French-speaking population and wishes to preserve it for future generations.

At present, section 16 of the *CYFSA* requires that service providers, where appropriate, provide service in French to families and children. However, there is no specific obligation on service providers to ascertain and document the linguistic identity of children. The *CYFSA* should specifically establish this obligation for service providers.

Proposal 5

Section 15 of the *CYFSA* should be amended to require service providers to inquire about and document whether a child prefers receiving services in English or French.

The proposed amendment to Bill 188 could read as follows:

The *CYFSA* shall be amended by adding the following section: **15 (5)** Service providers shall ask children and young persons and document whether they wish to receive services in English or French.

Protection investigations in youth justice facilities

Further, the proposed changes in Bill 188 fail to address concerns that I identified regarding child protection investigations that take place in youth justice facilities.

Children's aid societies should be able to investigate any concern that a child within their jurisdiction may be in need of protection. Societies typically must rely on co-operation to ensure adequate and accurate information is obtained during the protection investigation. Yet, my Office recently received a complaint about staff at a youth justice facility that refused to cooperate with a society investigation. When this concern was raised with senior officials at the Ministry of Children, Community and Social Services, my Office was informed that the *CYFSA* did not allow the society to compel youth justice staff to co-operate with the investigation. The Ministry agreed this was a problem and suggested the legislative review of the *CYFSA* might present an opportunity to address this gap.

Children's aid societies should be able to investigate protection concerns for young people in youth justice facilities. The *CYFSA* should be amended to compel staff at youth justice facilities to co-operate with an investigation of a children's aid society. The "Youth Justice" part of the *CYFSA* (Part VI) already includes language that compels staff to co-operate with certain types of investigations, and similar language should be added for investigations conducted by children's aid societies.⁷

Proposal 6

The *CYFSA* should be amended to require all employees of youth justice facilities to co-operate with investigations conducted by a children's aid society.

⁷ Subsection 154(2) of the *CYFSA* currently provides:

- Any person employed in the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment.

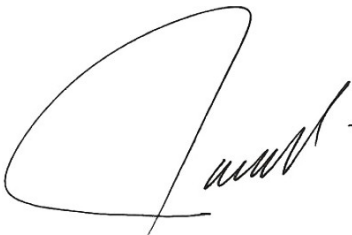
The proposed amendment to Bill 188 could read as follows:

The *CYFSA* shall be amended by adding the following section: **154.1** Persons employed in a place of open custody, of secure custody or of temporary detention shall fully co-operate with any investigation conducted by a children's aid society including requests for information, or the production of documents or things in their possession.

Conclusion

I commend the government's ongoing commitment to improving the safety, well-being and privacy of children and youth in care and other licensed out-of-home care settings through the proposed amendments in Bill 188. I encourage the Standing Committee to keep children and youth in focus while considering the proposed legislative amendments, and to take concrete action on the additional proposals that I have identified. I am confident, based on my Office's extensive experience, that the changes proposed would enhance and safeguard the rights of children and youth in a manner that is focused on, and consistent with, their needs, desires, and developmental levels.

I appreciate the Committee's consideration of my comments. My staff would be pleased to provide more information and answer questions regarding my proposals.



Paul Dubé
Ombudsman of Ontario

Ce mémoire est aussi disponible en français