



Submission to the
Standing Committee on
Finance and Economic Affairs
regarding Bill 57,
*Restoring Trust, Transparency and
Accountability Act, 2018*

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Introduction

In addressing the changes proposed by Bill 57, I will devote most of my comments to those amendments that affect the Office of the Ombudsman of Ontario, and the *Ombudsman Act*. Most notable among these are amendments that will expand the mandate of this office into areas that are presently within the mandate of my fellow Officers of the Legislature, the Provincial Advocate for Children and Youth (Child Advocate) and the French Language Services Commissioner.

No discussion of these proposals can begin without the acknowledgement of the tremendous work of my two colleagues, Francois Boileau and Irwin Elman, for whom these roles were not just a job, but a passion. The difference they and their teams have made in the lives of Ontarians over the past decade is significant, and their legacy is large.

I am committed to ensuring that my Office pursues the work that Bill 57 transfers to us with their examples in mind. We will devote the full force of our independence, integrity and credible process to these new areas.

In so doing, we will draw on our experience in reaching out to new stakeholders to inform them about our services, as we did in taking on the largest mandate expansion in this Office's history, with the passage of the *Public Sector and MPP Accountability and Transparency Act, 2014*. This act, which came fully into force in 2016, doubled the number of public sector bodies within the Ombudsman's jurisdiction, to more than 1,000. It extended our ability to help Ontarians with their complaints about administrative issues to municipalities, universities and school boards – in addition to all provincial ministries, agencies, corporations, boards, commissions and tribunals.

That experience clearly demonstrated the value of – and public need for – independent oversight of these bodies, which directly affect Ontarians' lives. We have been able to help thousands of people who previously had no recourse for their complaints, and to assist hundreds of public sector bodies in improving their transparency, accountability and service to the public.

The Ontario Ombudsman's expertise lies in administrative fairness and thorough investigation of individual and systemic issues. We will leverage this knowledge and experience as we reach out to new stakeholders in our latest areas of expanded jurisdiction.

At the same time, it should be noted that, as it has only been 18 days since we learned of Bill 57's proposals, we continue to review the legislation and seek further details from the government as to how it envisions their implementation.

We look forward to hearing more from the government about its plans, and, as I stated to the Board of Internal Economy on November 20, I will present a budget proposal to them in due course that takes the new responsibilities transferred to my Office into account.

What follows are my recommendations and observations, based on our review of the bill thus far, regarding important matters that I believe the committee should consider and address prior to its third reading.

Role of the Ombudsman

In proposing changes to several existing Offices of the Legislature, Bill 57 has engendered considerable discussion about those officers' roles, and the distinctions between them. Such discussion provides a welcome opportunity to increase public awareness of the role of the Ombudsman. Although the Ontario Ombudsman has existed since 1975 and the Office's work has had a positive impact on public services for millions of people, the definition of "ombudsman" (Swedish for "people's representative") is not widely known. As the title itself suggests, the Ombudsman is a long-established institution of democracies around the world.

The Ombudsman responds to public complaints – more than 21,000 per year in our Office – but can also conduct investigations on his own initiative, into individual or systemic issues. The role of the Ombudsman is to enhance governance by promoting transparency, accountability and fairness – whether through informal resolutions, proactively working with public officials, suggesting best practices, or issuing investigative reports and recommendations.

The Office of the Ombudsman articulates these principles in our mission and vision statements:

Mission: We strive to be an agent of positive change by promoting fairness, accountability and transparency in the public sector.

Vision: A public sector that serves citizens in a way that is fair, accountable and transparent.

Fundamentally, the Ombudsman is independent and impartial. The Ombudsman does not advocate for complainants or for public sector bodies; rather, the Ombudsman advocates for fairness, as well as for recommendations for constructive solutions to administrative problems, based on evidence gathered in investigations. This is an important distinction to bear in mind in the implementation of Bill 57's changes.

Independence of Officers of the Legislature

Among the concerns raised publicly about Bill 57, in the Legislature and elsewhere, were those related to new provisions allowing for the suspension of the Ombudsman or another Officer of the Legislature if the Assembly were of the opinion that such a suspension was warranted. Although I understand that the committee is already aware of these grave concerns, I want to take this opportunity to reiterate them.

The Ombudsman's independence has always been protected by robust legislation and a respect for the rule of law. It is precisely the stature of an independent Officer of the Legislature – and not a precarious appointment serving at the pleasure of the government – that enables the Ombudsman to speak truth to power and effect positive change, for the benefit of the people and institutions of Ontario. The same is true for the other Officers.

Certainly, there should be a mechanism for the Assembly to address situations where an Officer may become incapacitated or engage in serious misconduct, warranting suspension or removal for cause. However, the proposal that an Officer could be suspended simply on the opinion of a majority of members of the Assembly has no precedent in Canada.

I am respectfully requesting that Bill 57 be amended to provide that any power of suspension of the Ombudsman or other Officers of the Legislature be limited to situations where there is cause, either due to serious misconduct or incapacity. Such a power should only be exercised on the vote of a minimum of two-thirds of the Assembly. I also want to note that I am supported in this request by the International Ombudsman Institute, the Canadian Conference of Parliamentary Ombudsman and the Forum of Canadian Ombudsman.

On a related note, the bill also proposes that the Ombudsman's salary is to be determined by the Board of Internal Economy. It is respectfully submitted that, given the scope of oversight, nature of responsibilities and expertise required, the Ombudsman's salary should be set to the same benchmark as that of the Auditor General; namely that of a senior Deputy Minister.

Matters Concerning French Language Services

Among the most debated aspects of Bill 57, both in the Legislative Assembly and elsewhere, has been the disposition of the responsibilities of the French Language Services Commissioner with regard to that Office's important advocacy role, given that advocacy is not traditionally part of the Ombudsman function. It has since been proposed that the bill be amended to preserve this aspect of the Commissioner's role, within the Ombudsman's Office.

This advocacy role is clearly of great importance to Franco-Ontarians and the province as a whole, and I support its recognition and preservation as part of the Commissioner's ongoing mandate. As my Office further reviews the details of the bill and the government's plan, I will seek to ensure that this role is adequately funded.

Matters Concerning Children and Youth

Bill 57 proposes to transfer the Child Advocate's functions relating to investigating matters concerning children and youth to the Ontario Ombudsman. Since the bill's introduction, the responsible Minister has expressed the intention for the Ministry assume much of that Office's important advocacy role, through the establishment of a roundtable system, among other things. My comments are therefore focused on the proposed changes related to Ombudsman investigations.

In announcing these changes, several government members have indicated that they envision more robust investigations as a result. However, our review of the bill has revealed some gaps that need to be addressed in order to allow my Office to pursue this mandate effectively. I am recommending the bill be amended accordingly.

Investigations of Child Deaths

At present, the Child Advocate is prohibited from investigating child deaths that fall within the jurisdiction of the Office of the Chief Coroner or its committees. The bill carries an even stronger version of this over into the *Ombudsman Act*.¹ This prohibition on investigating the most serious of cases involving children is inconsistent with the scope of the Ombudsman's existing authority and with the fact that child deaths should be examined thoroughly and through multiple lenses.

¹ The restriction on the Ombudsman's investigating child deaths is absolute under Bill 57, while the existing legislation permits the Child Advocate to investigate systemic issues relating to a child death once the coroner's proceedings have been completed.

I recommend that the prohibition be eliminated.

There has never been a restriction on the Ombudsman investigating matters concurrent with coroner's investigations, including those involving child deaths. For example, several child deaths served as a catalyst for this Office's 2014 investigation into how the Ministry of Education responds to complaints and concerns relating to unlicensed daycare providers.²

The Ombudsman investigates from a different perspective and for a different purpose than the Chief Coroner, and they do not duplicate one another's efforts.

Most child advocates in Canada investigate child deaths. Ontario should not be an exception. There should be no unnecessary limit on the Ombudsman's authority to investigate cases related to child deaths, given that such investigations could lead to recommendations for life-saving improvements in the child welfare system.

In order to fulfill the mandate in this area, the Ombudsman should also be notified of deaths of children receiving services from children's aid societies and licensees under the *Child, Youth and Family Services Act, 2017*, or who have received services within a year of death.

Rights of Appeal and Review

Under the *Ombudsman Act*, the Ombudsman cannot investigate matters when there is a statutory right of appeal or review on the merits until the right has been exercised or expired. This restriction would also apply to any Child Advocate investigations that are transferred to the Ombudsman by Bill 57.

While the Ombudsman is generally intended to be a recourse of last resort, urgent situations will undoubtedly arise which may require more immediate attention. Other child advocate offices in Canada have a discretion to act in such situations – e.g., Saskatchewan's Child Advocate can waive the requirement to exhaust appeal rights in certain circumstances.

I recommend that Bill 57 be amended to provide the Ombudsman with the discretion to determine when circumstances warrant immediate intervention and investigation.

² Ontario Ombudsman, *Careless About Child Care*: Investigation into how the Ministry of Education responds to complaints and concerns relating to unlicensed daycare providers, 2012. Online: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2014/careless-about-child-care>

Publication of Names

Bill 57 proposes to prevent the Ombudsman from disclosing a child's name or other identifying information when reporting on certain investigations – an extension of existing provisions applying to the Child Advocate. The Child Advocate has previously raised a concern about this limitation and called for an amendment that would permit disclosure of the identity of a deceased child if it has already been made public through inquest or court proceedings.³

Child advocates in other provinces have the authority to publish identifying information in certain circumstances – for instance, in Manitoba, the Advocate may do so if the name has already been released lawfully by other means.

It would greatly assist my Office in carrying out its work effectively and transparently to be able to refer to names of children that have already been made known to the public through court proceedings, as well as to public inquest recommendations relating to named children. I recommend that Bill 57 be amended to provide the Ombudsman with this ability.

Access to Information

Currently, s.19(3.1) of the *Ombudsman Act* provides for clarity that certain provincial privacy provisions should not be used to prevent disclosure to the Ombudsman, including the *Freedom of Information and Protection of Privacy Act*.

Part X of the *Child, Youth and Family Services Act, 2017*, which is to come into force on January 1, 2020, contains certain privacy and consent requirements that may interfere with the Ombudsman's effective investigation of issues relating to children and youth.

Accordingly, s.19(3.1) should be amended to include reference to the *Child, Youth and Family Services Act, 2017*.

³ Ontario Provincial Advocate for Children and Youth, Submission to Standing Committee on General Government on *Bill 8: Public Sector and MPP Accountability and Transparency Act, 2014*. Online: <http://www.ontla.on.ca/library/repository/mon/29004/330085.pdf>

Conclusion

With the necessary resources and the appropriate legislative framework, I am confident that my Office will be able to effectively carry out the new responsibilities proposed by Bill 57, as we have done in the past when assuming additional jurisdiction. I thank the committee for considering my recommendations for amendments and improvements – a list of which follows on the next page.



Paul Dubé
Ombudsman of Ontario

List of Proposed Amendments to Bill 57

Independence and Power to Suspend Officers of the Assembly

1. Limit power to suspend an Officer of the Assembly to for cause or incapacity and require, at a minimum, a two-thirds vote of the Assembly.
2. Set the Ombudsman's salary at the same benchmark used for the salary of the Auditor-General, i.e., senior Deputy Minister level).

Investigation of Cases Involving Child Deaths

3. Remove proposed section 14 (4.6) from the Bill (schedule 28, clause 7).

Notification of Child Deaths

4. Add the requirement under Bill 57 (schedule 28) that the Ombudsman shall be notified of deaths of children receiving services or who have received services within a year of the death from children's aid societies and licensees under the *Child, Youth and Family Services Act, 2017*.

Identification of Cases Where A Child's Name has been Made Public by Lawful Authority

5. Amend "Prohibition: Identifying Child" proposed section 7.3(1) to read that the Ombudsman shall not disclose in any report the name of or any identifying information about a child to whom an investigation conducted under subsection 14(1.1) may relate except where such name or other identifying information has been made public by a Court order or Court proceeding or proceeding of the Coroner.

Power to Address Urgent and Compelling Cases

6. Amend section 14 of the *Ombudsman Act* to provide that despite section 14(4)(a) of the *Ombudsman Act*, the Ombudsman may launch an investigation under section 14(1.1) (Children and youth) where in his opinion there exists compelling circumstances to warrant an investigation.

Access to Information

7. Amend s.19(3.1) of the *Ombudsman Act* to include reference to the *Child, Youth and Family Services Act, 2017*.