



**Submission to the Ministry of Children, Community  
and Social Services regarding the Five Year Review  
of the *Child, Youth and Family Services Act, 2017***

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## Overview

Every five years, the Ministry of Children, Community and Social Services is required to formally review the *Child, Youth and Family Services Act, 2017* (the *CYFSA*) and to report publicly on the review's findings. The *CYFSA* outlines the rules for certain programs and services provided to some of the most vulnerable children and youth in the Province and their families.

The Ministry's ongoing review is the first to take place since the Act was proclaimed in 2018. The Ministry's "Discussion Guide"<sup>1</sup> focuses on six key areas: child and youth rights, First Nations, Inuit and Métis peoples, equity and anti-racism, prevention and community-based care, quality services, and accountability. I am broadly supportive of the Ministry's identified objectives for legislative change and am hopeful that this review will provide an opportunity to address deficiencies and gaps my Office has identified in the *CYFSA*, and ultimately strengthen safeguards for children and youth receiving government services.

## 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 can also review complaints about children's aid societies, residential licensees, and secure treatment facilities that provide services to children and youth under the *CYFSA*, 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

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<sup>1</sup> Ministry of Children, Community and Social Services, "Youth Discussion Guide: 2023 Review of the Child, Youth and Family Services Act, 2017 (*CYFSA*)" (May 2023), online: <<https://files.ontario.ca/mccss-cyfsa-review-youth-discussion-guide-en-2023-05-11.pdf>>.

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.

Our Office received approximately 25,000 complaints last year (2021-2022), including more than 1,700 complaints about children's aid societies and residential licensees. These complaints 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 – Indigenous Circle; Black Children, Youth and Families Table; 2SLGBTQIA+ Outreach Group; and a 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 services in Ontario by ensuring they are treated fairly.

## Background

A number of the proposals I am putting forth below for the Ministry's consideration are designed to ensure that children and youth who receive services under the *CYFSA* know whom to contact if they require assistance or if they have concerns about their care. These proposals draw on findings from reports previously commissioned by both the Canadian and Ontario governments in response to allegations of abuse and neglect at institutions for children run or funded by the government.

For example, a report in 2000 by the Law Commission of Canada identified several factors which were believed to contribute to the abuse of children in institutional settings. These factors were:

- Children were often racialized, suffered economic disadvantage, or had mental, physical, or developmental disabilities and little ability to safeguard their own rights and interests;
- The power imbalance between the children residing within the institution and the adults working there. This meant those who ran the institution could more easily deny, discount or disbelieve what treatment the children said they received or witnessed; and
- The lack of external independent oversight on the daily activities, discipline, and quality of care received by children in institutions.<sup>2</sup>

Relatedly, a report by the Ontario government identified three “essential” factors that contribute to the safety of children living in residential care: •

- Children and youth must know their rights;
- Children and youth must understand the difference between acceptable and unacceptable treatment;
- Children, youth and staff must be empowered to make complaints without fear of the consequences.<sup>3</sup>

The proposals outlined below, as well as my Office’s general approach to handling complaints from young people, are guided by the principles set out in the United Nations Convention on the Rights of the Child. Articles 3 and 20 recognize that the best interest of the child must be a primary consideration in all actions concerning children and that children deprived of their family environment must be entitled to special state protection and assistance. These principles guide the work of my Office and are particularly relevant for the Ministry’s review.<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> Joanne Campbell, “Review of Safeguards in Children’s Residential Programs: A report to the Ministers of Community and Social Services and Correctional Services” (Ontario: 1990) at 23.

<sup>4</sup> Article 3 states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Article 20 states: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

## Restoring rights under the *CYFSA*

Over the past two years, my Office has met with hundreds of children, youth and front-line staff at conferences, group homes, and foster homes. We were told by many people, including children and youth in care, that they were under the impression that there was “no longer anywhere for young people to call” if they required assistance after the Office of the Provincial Advocate for Children and Youth was dissolved.

In my view, part of the reason for this misunderstanding is because provisions of the *CYFSA* that dealt with the rights of children and youth to receive assistance from the Provincial Advocate were repealed in 2019 after the Provincial Advocate’s Office was dissolved. While service providers have obligations under the *Ombudsman Act* to provide information to children about our office, there are no corresponding rights in the *CYFSA* for children to *be told* about the Ombudsman’s Office. In particular, we have heard from Black children and youth and 2SLGBTQIA+ youth that they were unaware they could call our office to independently assess and review their concerns. Although we have established specialized teams who provide outreach to Indigenous, Black, and 2SLGBTQIA+ youth, we know that 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*.

This situation jeopardizes the right of children and youth to know about and access complaints mechanisms set up to protect their interests. Three repealed provisions of the *CYFSA* setting out the right to know and access complaints mechanisms for children and youth should be restored, with updated references to the “Office of the Ombudsman of Ontario”.

Specifically, the *CYFSA* should include an obligation for service providers to inform children and youth about the existence and the role of the Ombudsman. This obligation should be recognized with respect to children and youth in care as well as other young people receiving services from children’s aid societies, including sixteen and seventeen-year-olds seeking protection services under Voluntary Youth Services Agreements and young people transitioning out of the care of a children’s aid society who enter into agreements as part of the “Ready, Set, Go” program. This proposal can be addressed by reinstating the currently repealed paragraph 6 of section 3 of the *CYFSA*.<sup>5</sup>

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<sup>5</sup> The reinstated provision would read as follows:

- 3 Every child and young person receiving services under this Act has the following rights: [...]
6. To be informed, in language suitable to their understanding, of 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.

## **Proposal 1**

**The currently repealed paragraph 6 of section 3 of the *CYFSA*, a provision setting out the right of children and youth to be informed of their right to contact the Provincial Advocate for Children and Youth, should be reinstated with a reference to the Office of the Ombudsman of Ontario.**

Second, the Act should reinstate the obligation for service providers to display a notice advising of the existence and role of the Ontario Ombudsman, as well as the obligation to provide Ombudsman informational materials when requested. This proposal can be addressed by reinstating the currently repealed subsection 15(5) of the *CYFSA*, with necessary modifications.<sup>6</sup>

## **Proposal 2**

**The currently repealed subsection 15(5) of the *CYFSA*, a provision requiring service providers to display information about the Provincial Advocate for Children and Youth, should be reinstated with a reference to the Office of the Ombudsman of Ontario.**

Third, children and young people should be specifically told about the Ontario Ombudsman when they access certain existing complaint mechanisms. Specifically, the complaint procedures for service providers who provide residential care to children or young persons, as well as those who place children or young persons in residential care, should require service providers to tell children in care about our Office. This proposal can be addressed by reinstating the currently repealed subsection 18(2) of the *CYFSA*.<sup>7</sup>

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<sup>6</sup> The reinstated provision would read as follows:

**15** [...]

(5) Service providers shall,

(a) prominently display at their premises, in a manner visible to persons receiving services, a notice advising of 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; and

(b) make available on request informational materials produced by the Office of the Ombudsman of Ontario.

<sup>7</sup> The reinstated provision would read as follows:

**18** [...]

(2) The procedure established under subsection (1) must provide that the service provider shall tell the children in care that they may ask for the assistance of the Office of the Ombudsman of Ontario in,

(a) making a complaint under clause (1) (a) or (b); and

(b) requesting a further review under subsection 19 (1) of the complaint once the review by the service provider is completed.

### Proposal 3

The currently repealed subsection 18(2) of the *CYFSA*, a provision requiring service providers to provide certain information to children about the Provincial Advocate for Children and Youth under their complaint procedure, should be reinstated with a reference to the Office of the Ombudsman of Ontario.

## Enhanced rights for young people seeking VYSAs

### Voluntary Youth Service Agreements (VYSAs)

On January 1, 2018, the Ontario government raised the age of protection from 16 to 18 years of age. Young people in this age range can enter into Voluntary Youth Service Agreements (VYSAs) with children's aid societies if they are in need of protection and wish to accept protection services.

Prior to this change, concerns had been raised with the government that 16 and 17-year-old youth who felt unsafe in their family situation had few options. At the time, the Ontario Association of Children's Aid Societies noted these young people:

[...] often had to choose between continu[ing] to suffer abuse or leav[ing] home with no support. Even if they approach social services for financial assistance, their parents may have been contacted—which could have put them at further risk. Many became homeless. Ontario was the only province in Canada that did not provide protection services up to the age of 18.<sup>8</sup>

Legal professionals and front-line staff have contacted my Office to highlight a concern that too many of the 16- and 17-year-olds who seek assistance from children's aid societies are refused. For example, we were told by a group of community workers that while they referred 495 young people to children's aid societies for assistance in 2018, only 11 VYSAs were signed. For 2019, the same group of community workers indicated that they made 121 referrals and only 3 young people entered into VYSA agreements.

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<sup>8</sup> Ontario Association of Children's Aid Societies, *Ontario raises age of protection for youth from 16-18 (January 23, 2018)*, online: Ontario Association of Children's Aid Societies <<https://www.oacas.org/2018/01/ontario-raises-age-of-protection-for-youth-from-16-to-18/>>.



While this data is anecdotal, it suggests that there may be a need for enhanced access to complaints and oversight mechanisms for vulnerable youth that 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 societies to inform them of my Office would further support child and youth rights and ensure greater accountability. This proposal can be addressed by amending section 77 to require this notification.<sup>9</sup>

#### **Proposal 4**

**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.**

### **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 children's aid society enters into a "Ready, Set, Go" agreement or seeks to terminate a

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<sup>9</sup> The proposed provision could read as follows:

**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” 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. This proposal can be addressed by amending section 124 to provide for this notification.<sup>10</sup>

### **Proposal 5**

**Section 124 of the CYFSA should be amended to provide that all children’s aid societies must inform a youth who 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.**

## **Expanding access to the Ombudsman**

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 mandate of the Ombudsman is much narrower: at present, it is restricted to children receiving services from children’s aid societies and residential licensees (including youth justice facilities and secure treatment facilities).

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.

This gap should be fixed and the right to contact my Office should exist for all children and youth receiving services under the *CYFSA*. This proposition is not novel: this right was available under the Office of the Provincial Advocate for Children and Youth. Similarly, in January 2023, regulations under the *Education Act* allowed students at the Provincial and Demonstration schools who are deaf, deaf-blind, or have severe learning disabilities to raise concerns with my Office in the same way these students used to have access to the Provincial Advocate. The government should restore access to an independent complaint and oversight mechanism to all children and youth receiving services under the *CYFSA*.

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<sup>10</sup> **124** (2) Where a person 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.

The *Ombudsman Act* contemplates this expansion, as paragraph 14(1.1)(c) allows my Office to investigate “any other matter concerning a child or young person who is seeking or receiving a service prescribed by regulations”. The Lieutenant Governor in Council should make a regulation providing my Office with the authority to review any matter concerning a child with respect to services provided under the *CYFSA*.

### **Proposal 6**

**A regulation made under the *Ombudsman Act* should specify that my Office may investigate matters concerning a child or young person seeking or receiving services provided under the *CYFSA*, including unlicensed facilities, unlicensed agencies, and agencies delivering non-residential mental health or developmental services to children.**

## **French language services**

My Office’s experience has revealed that francophone children and youth 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. 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.<sup>11</sup>

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<sup>11</sup> The proposed amendment to the preamble could read as follows:

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.

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### **Proposal 7**

**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.**

At present, regulations to the *CYFSA* require service providers to document how they take “identity characteristics” into account when making decisions about the provision of services.<sup>12</sup> Although “linguistic needs” fall within these characteristics, the language rights and interests of French-speaking children should be specifically ascertained, documented, and taken into consideration. Ontario Regulation 156/18 should be amended to specifically require service providers to inquire about whether a child would like to receive services in French.<sup>13</sup>

### **Proposal 8**

**Ontario Regulation 156/18 made under the *CYFSA* should be amended to require service providers to inquire about whether a child prefers receiving services in English or French.**

## **Protection investigations in youth justice facilities**

Children’s aid societies should be able to investigate any concern that a child may be in need of protection within their jurisdiction. Societies typically must rely on cooperation 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 cooperate with the investigation. The Ministry agreed this was a problem and suggested this legislative review may be an opportunity to address this gap.

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<sup>12</sup> O Reg. 156/18 s 3. (3).

<sup>13</sup> The proposed provision could read as follows:

**4** (5) The service provider shall,

(a) ask the child what information, if any, the child wishes to have the service provider take into account when making decisions, including whether the child would like services in French [...].

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 cooperate 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 cooperate with certain types of investigations, and similar language should be added for investigations conducted by children's aid societies.<sup>14</sup>

**Proposal 9**

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

## Conclusion

I encourage the Ministry to keep children and youth in focus during its review of the *Child, Youth and Family Services Act, 2017*. As set out in these submissions, there are opportunities to make amendments that will 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 Ministry's consideration of my comments. My staff would be pleased to provide further information and answer questions regarding these proposals.



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Ombudsman of Ontario

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<sup>14</sup> 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.