
# Review of the *Child and Family Services Act*

*Recommendations of the Ontario Association of Children's Aid Societies*

January 2010

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## Introduction

Ontario Association of Children's Aid Societies (OACAS) welcomes the Minister of Children and Youth Services' review of the *Child and Family Services Act*. This mandated review provides the opportunity to modernize the *Child and Family Services Act*, thereby enhancing outcomes for Ontario's children and families who receive service from mandated Children's Aid Societies.

Ontario Association of Children's Aid Societies (OACAS) is a membership organization representing 51 of 53 Children's Aid Societies (CASs) 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 almost 100 years, OACAS has demonstrated a history of successful advocacy, member services, and public education on behalf of its member societies, as well as the children and families served by CASs in Ontario. The strength of OACAS lies in both the extent of its membership and the commitment and participation of the 51 member Children's Aid Societies in Ontario.

Ontario's Children's Aid Societies, on behalf of the Province of Ontario, are legislated under the *Child and Family Services Act (CFSA)* to:

- investigate allegations of abuse and neglect;
- protect children, when necessary;
- provide guidance, counseling and other services to families in order to protect children and to prevent circumstances requiring the protection of children;
- provide care or supervision for children assigned to its care;
- place children in care of Societies for adoption.

Ontario Association of Children's Aid Societies provides recommendations, consistent with the MCYS Strategic Framework, to the Minister of Children and Youth Services. Specifically, recommendations speak directly to ensuring the Ministry's strategic goals are met:

- Every child and youth has a voice;
- Every child and youth receives personalized services;
- Everyone involved in service delivery contributes to achieving common outcomes;
- Every child and youth is resilient; and
- Every young person graduates from secondary school.

Amendments recommended by the child welfare field are intended to modernize the *Child and Family Services Act*, remove barriers that impact the safety of children, and enhance the outcomes and experiences of all children and families receiving services from Ontario's Children's Aid Societies.

## Child Welfare Field Consultation Process

The OACAS *Child Welfare Policy and Legislation Committee*, on behalf of the child welfare field, is responsible for the development of proposals regarding the 2010 review of the *Child and Family Services Act*. The *Child Welfare Policy and Legislation Committee* is an OACAS committee that reports to the OACAS Board of Directors. The committee is comprised of senior field representatives, OACAS staff and a Director of the OACAS Board.

The Zone Chairs/Local Directors Section Executive (comprised of the Section Officers and Chairs of each of the 6 zones) review, provide feedback and endorse proposals on behalf of the child welfare field.

The OACAS Board of Directors (26 regional representatives from across the province, plus the President and Past President) review, provide feedback and approve proposals on behalf of the child welfare field.

### Child Welfare Policy and Legislation Committee Expert Reference Groups

The *Child Welfare Policy and Legislation Committee* struck Expert Reference Groups that are responsible for each identified area of priority for the 2010 review of the *Child and Family Services Act*. Expert Reference Groups are chaired by a senior service professional and senior legal counsel from Children's Aid Societies across Ontario. Expert Reference Groups are responsible for reviewing field consultation materials and developing and producing recommendations to the Minister regarding identified areas of priority.

### Child Welfare Field Consultation Process

Beginning in 2008, the *Child Welfare Policy and Legislation Committee* undertook an extensive field consultation process. This process included a field survey in 2008, allowing each Children's Aid Society to put forward its recommendations. Following this, surveys were reviewed by the *Child Welfare Policy and Legislation Committee*; six recommended areas of priority were determined. Areas were determined by two factors: a necessity for legislative amendment to achieve the policy objective, and a significant policy objective that would enhance the safety and well-being of children and families.

Throughout this process, representatives of the committee have briefed and consulted with various child welfare field committees, to ensure they were apprised of the process and to determine if there was agreement with the proposed direction of the Committee and the recommended areas of priority. These groups have included, OACAS Board of Directors, Local Directors Section Executive, Directors of Service, Resource Managers, Q-NET, Senior Counsel Network Group and Finance Managers.

In 2009, Chairs of each Expert Reference Group continued to update Local Directors, and Local CAS and OACAS Board members regarding identified areas of priority.

In the summer of 2009, the *Child Welfare Policy and Legislation Committee* presented a Field Consultation Paper regarding the developed areas of priority and invited each Children's Aid Society to provide feedback. The Field Consultation Paper provided background, preliminary analysis and proposed recommendations.

In the fall of 2009, the *Child Welfare Policy and Legislation Committee* determined final priorities for recommendation to the Minister. These priorities were endorsed by the Local Directors Section Executive and approved by the OACAS Board of Directors. This submission has received final endorsement by the Local Directors Section Executive and approval by the OACAS Board of Directors.

## Services to Aboriginal Children and Families

ISSUE

Section 226 of the *Child and Family Services Act* provides that: "Every review of this *Act* shall include a review of provisions imposing obligations on societies when providing services to a person who is an Indian or Native person or in respect of children who are Indian or Native persons with a view to ensuring compliance by societies with those provisions."

Following extensive consultation, the child welfare field has concluded that concerns which need to be addressed regarding Aboriginal child welfare services to children and families are more extensive than the requirements of Section 226. Issues as they relate to Aboriginal children are complex and have the potential to affect various stakeholders differently; non-Aboriginal agencies, mandated First Nations agencies, pre-mandated First Nations agencies and the various First Nations.

The matters that are currently of greatest significance to the child welfare field, as they relate to Aboriginal children, are devolution and customary care.

**Devolution**

Subsection 2(2), paragraph 5 of the *Child and Family Services Act* provides that one of the purposes of the *Act,* in addition to the paramount purposes, and so long as it is consistent with the paramount purposes, is: to recognize that Aboriginal people should be entitled to provide, wherever possible, their own child and family services and that all services to Aboriginal children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

Subsection 211(2)(c), which is contained in Part X, provides that the Ministry may designate the child and family service authority that is providing services, with its consent and if it is an approved agency, as a society under subsection 15(2) of Part 1 (Flexible Services).

These provisions presuppose that the child welfare field can expect an increase in designated agencies. However, there currently exists little to no guidance, particularly on a consistent provincial basis, to assist non-Aboriginal agencies with the process of devolution, and capacity building, in partnership with First Nations Aboriginal child and family services.

Ontario Association of Children's Aid Societies (OACAS) worked in partnership with the Association of Native Child and Family Services Agencies Ontario (ANCFSAO) under the Joint Task Force on Aboriginal Services. The Joint Task Force on Aboriginal Services is endorsed by both OACAS and ANCFSAO and included representation from mandated Aboriginal Children's Aid Societies, mainstream CASs and Aboriginal agencies that were seeking to establish their own child welfare services, a process they are entitled to under the *Child and Family Services Act*.

The Joint Task Force on Aboriginal Services was dedicated to the promotion of self governance, and committed to helping guide the process to facilitate the eventual devolution of Aboriginal services by

mainstream Children's Aid Societies to Aboriginal child welfare agencies. The Joint Task Force on Aboriginal Services areas of focus included identifying barriers to devolution and attempting to address those barriers.

OACAS and its member agencies have supported the Joint Task Force on Aboriginal Services and its mission of devolution. In September, 2006, Local Directors of OACAS member Children's Aid Societies passed a motion in support of devolution. This motion was supported by the OACAS Board in November, 2006. The motion states:

> Be it RESOLVED that the OACAS Board of Directors approves the resolution passed by the Executive Committee and by the Local Directors Section that the OACAS endorse in principle the devolution of child welfare services to Aboriginal and First Nations children and families to Aboriginal and First Nations themselves.

Despite provisions of the *Child and Family Services Act* that allow First Nations and Aboriginal communities to establish child welfare services and achieve designation to deliver child protection services, there are only six designated Aboriginal CASs in Ontario[1]. The progress of devolution depends on government prioritizing this agenda and actively collaborating with Aboriginal communities. Aboriginal communities and advocates are the appropriate stakeholders to consult with to establish whether the barriers to progress are legislative, regulatory, financial or other. It is critical that government consult with the Aboriginal leadership to determine the appropriate course of action.

**Customary Care**

There is a lack of clarity, provincially, with respect to the use of customary care as a permanency option for children involved with the child welfare system, notwithstanding the statutory obligation contained in Section 63.1 for a society to make reasonable efforts to assist a Crown ward to develop a positive, secure and enduring relationship within a family through, in the case of an Aboriginal child, a plan for customary care, as defined in Part X.

BACKGROUND

There are currently approximately three times more Aboriginal children in care in Canada than at the height of the residential school system in the 1940's. While Aboriginal children represent only five percent of the children in Canada, they constitute about 40% of the children in care in this country. Bill 210 introduced further initiatives to support traditional practices for Aboriginal children in Ontario. However, policy and regulations were not sufficiently developed to support legislation.

[1] Designation of Ontario's Aboriginal Children's Aid Societies: Tikinagan Child and Family Services, 1987; Weechi-it-te-win Family Services, 1987; Payukotayno James and Hudson Bay Family Services, 1987; Dilico Anishinabek Family Care, 1995; Native Child and Family Services of Toronto, 2004; Anishinaabe Abinoojii Family Services, 2006, replacing Aboriginal Child and Family Services, designated 2003, replacing Wabaseemoong, designated 1994.

ANALYSIS

**Devolution**

Notwithstanding the statistics referred to above and their implications, in the province of Ontario there are only six First Nations child and family service agencies designated as Children's Aid Societies. The objective, as identified previously, is for First Nation child welfare agencies to provide child welfare services to First Nation children. Not only is this contemplated in the *Child and Family Services Act,* it is an emerging expectation from First Nation communities as they seek greater self-governance and oversight with respect to financial and social service planning. There are at least four First Nation agencies currently seeking mandate and several others who have identified an intention to do so. The face of child welfare will be changing in the province of Ontario; leadership by the provincial government in this extremely complex and vulnerable area is necessary.

All Children's Aid Societies and the Ministry of Child and Youth Services have obligations related to services to Aboriginal families and children. However, our greatest obligation in the coming years will be to ensure an appropriate transition of our mandate to the evolving First Nations child and family services agencies. The lack of a consistent, supported and directed policy approach in this area is jeopardizing non-Aboriginal child welfare agencies' ability to embrace and support capacity building for First Nation agencies, as more and more Aboriginal communities seek their own child welfare service model.

Planned and thoughtful strategies will help provide clarity and prepare non-Aboriginal agencies and resources in anticipation of devolution.

**Customary Care**

The Ontario Permanency Funding Guidelines creates a "Formal" customary care as opposed to customary care as it is defined in section 208 of the *CFSA*. The Guidelines presuppose that a Children's Aid Society will oversee the placement to adulthood. For this to be done by a non-Aboriginal child welfare agency, indeed for it to be done by any body but a designated Aboriginal child and family services authority, does not reflect the intentions for First Nations communities to have oversight of their Band members. Unless the placement is meant to be overseen by the child's own First Nation child and family services authority, there is a fundamental disconnect between the policy intent and the cultural practices of customary care.

There is an even further disconnect regarding expenditures. A child placed on Formal Customary Care may remain on this agreement until the age of 18 years of age. The agency overseeing the placement is required to provide long-term funding for it, as well as to incur the costs of administration and a child care worker, that is required given the current provincial policy that all Formal Customary Care placements must meet child in care and foster care standards. There is a lack of clarity regarding funding indicators for customary care for child welfare agencies, particularly cross jurisdictionally.

In addition, although children may remain in Formal Customary Care placements until they are 18 years of age, they are not protected under the CFSA should the placement break down when they are 16 years of age or older. Legal proceedings cannot be commenced when a child is 16 years of age or older, despite the policy directive to provide Customary Care until the child is 18 years of age.

Pre-mandated Native child and family services agencies who maintain a foster care license are not required to utilize SAFE and PRIDE. These agencies, as all other private sector operators, are exempt from PRIDE pre-service training and SAFE home assessments; they use alternate forms of assessment and training. As this is the case, an ever-increasing number of children are being placed in customary care homes that are not PRIDE and SAFE homes; nor are all First Nations child and family service authorities utilizing OnLAC in case planning. Given that the OnLAC policy directive was updated in 2009 to clearly advise that OnLAC must be applied to customary care children, the field is unclear regarding the Ministry's expectations relating to these inconsistent requirements.

Thus, there is currently no clarity with respect to who has oversight of a child placed under a customary care agreement. There is no clarity, in practice, with respect to which Band may make the BCR needed to engage a customary care placement. There is no clarity as to whether a child placed in a customary care placement is "in care" as we understand it, including for Ministry and INAC reporting/registering purposes. If a child is out of jurisdiction, there is no clarity with respect to who would have oversight for long-term planning. There is no cohesion or understanding across the province with respect to mainstream recognition of the inherent rights of Aboriginal communities to oversee the care of their Band members.

The policy intent since Child Welfare Reform has been to increase continuity and consistency in child welfare practice in Ontario; this value has not been upheld in regards to First Nation service delivery. Although the legislative intent is to recognize each First Nation's right to provide their own child and family services (section 1(2) 5), mainstream child welfare agencies require more clarity to guide their practice and engagement with First Nation communities.

## RESEARCH

A great deal of research has been completed in this area, including the First Nations Child and Family Caring Society of Canada's *Wen: De, The Journey Continues*; NWAC's *Strategies to Address Child Welfare*; ANCFSAO and OACAS Joint Task Force's *Aboriginal and Mainstream Child Welfare: Working Towards Devolution*; and British Columbia's Child and Youth Officer's *Heshook-ish Tsawalk: Towards a State of Healthy Interdependence in the Child Welfare System*.

## EXPERIENCE IN OTHER JURISDICTIONS

The Provinces of British Columbia and Alberta have adopted strategies in recent years, that are inclusive of and promote capacity building and the devolution of child welfare services to First Nations child and family service authorities. Much could be learned from the experiences in other jurisdictions.

PROPOSED RESOLUTION

In support of devolution, the OACAS Board of Directors and the child welfare field recommend a broader, engaged process by the Minister of Children and Youth Services to examine the delivery of Aboriginal child welfare services. Such a process would require the participation of Aboriginal leadership and be inclusive of child welfare practitioners delivering services to Aboriginal communities.

# PART VIII / Information Practices

## ISSUE

In order to more effectively protect children, Children's Aid Societies require a legislated framework for sharing information.

## BACKGROUND

There is no legislation specifically governing Information Practices by CASs. Part VIII of the *Child and Family Services Act* has never been proclaimed. It is now out of date and requires modernization. Other provincial and federal laws pertaining to record-keeping and disclosure either do not apply, or apply only in some limited respects to Children's Aid Societies.

In the absence of a statutory framework, CASs rely on policies developed locally, creating a patchwork of inconsistent approaches across the province. This results in an absence of predictable response for clients, community partners and other systems, such as the courts.

Furthermore, the absence of legislation that would apply universally is a barrier to fully open sharing of information between CASs themselves, as one Society cannot reliably predict how another will treat information that is shared.

In addition to the factors identified in 2005 as providing impetus for the development of a CAS-specific legislative scheme[2], more recent developments have further emphasized the fact that CASs need to share information openly and seamlessly with one another. This need was at the heart of the development and piloting of the Single Information System (SIS), the implementation of which will benefit greatly from a statutory framework. The importance of information flow between those involved in protecting children has been underscored by recent events such as the recommendations of the Gouge Inquiry[3] and the passage of Bill 133[4].

Although it is sometimes argued that CASs can simply agree to abide by a common policy in the absence of legislation, the increasing pressure to share information among CASs and disclose it to others increases potential liability as a result of the consequences of use and disclosure of the information. Only a statutory provision could protect a CAS from liability for sharing information in good faith and without malice.

[2] Including extension of the application of the federal *Personal Information Protection and Electronic Documents Act* (*PIPEDA*) to provincial entities engaged in commercial activities effective January 1, 2004, and proclamation of the *Personal Health Information Protection Act* (*PHIPA*) November 1, 2004.
[3] Inquiry into Pediatric Forensic Pathology in Ontario, Report released October 1, 2008.
[4] *Family Statute Law Amendment Act*, 2009, S.O. 2009, c.11, received Royal Assent May 14, 2009.

ANALYSIS

Legislation governing record keeping and disclosure needs to be unique to child welfare and must recognize the mandated functions of Children's Aid Societies. It is important that it be interpreted through the lens of section 1 of the *CFSA*, so that conflicts between competing interests or considerations are resolved with the paramount objective of ensuring the protection, well-being and best interests of the child at the forefront.

Leading up to the 2005 review of the *CFSA*, the OACAS CFSA/FLR Committee considered what an updated Part VIII might look like, and acknowledged that it would have to incorporate the general approaches of other existing legislated schemes dealing with privacy and access to information such as *Personal Health Information Protection Act* (*PHIPA)*. The policy work done in relation to the Single Information System in its pilot phases relied upon and reinforced the same principles.

In general terms, the legislation would have to:

- Deal with all aspects of record keeping by CASs, including the collection and use of information, access to information by the subject, disclosure of information to others, correction at the request of the subject, as well as storage and retention of records;
- Be informed by the fair information principles set out in the Canadian Standards Association Model Code for the Protection of Personal Information that are referenced in *Personal Information Protection and Electronic Documents Act (PIPEDA)* and reflected in *PHIPA*. These principles include accountability, consent, limiting collection, use, disclosure and retention, accuracy, safeguards, openness, access and provision for challenging compliance;
- Provide reasonably open access to the subject of his or her information and limit disclosure of the information to others without consent subject to some stated exceptions and qualifications;
- Distinguish sharing of information between CASs from disclosure to other service providers and third parties;
- Incorporate a mechanism for correcting and/or recording disagreement with information at the request of the subject; and
- Include a mechanism for review of decisions concerning access, disclosure and correction by a third party.

RESEARCH

The Canadian Charter of Rights and Freedoms has been held to protect an individual's right to privacy. In child welfare, privacy rights must always be balanced against the need to share information in order to ensure the protection and best interests of children.

Currently, there is a statutory duty to report to a CAS a suspicion that a child is in need of protection, together with the information on which the suspicion is based[5]. This duty comes with a protection from liability for reporting information in good faith[6]. There is no similar protection related to the sharing of information by one CAS with another in the myriad circumstances in which information must be shared to fulfill their mandated functions under s. 15(3) of the *CFSA*.

Further, there is no duty imposed on persons or organizations that provide services to children and/or families to disclose information to CAS in the course of a protection investigation. The *CFSA* provides CASs with an ability to apply for a Warrant for Records and to bring a motion or application to court for an order for production of records in the possession or control of third parties. Such processes may be procedurally cumbersome[7] and can result in considerable litigation on issues collateral to the protection of a child.

It has often been said that CASs could solve the problem of diverse and inconsistent record-keeping and disclosure practices by agreeing to adopt a single policy approach. Even if such a single uniform and universal policy approach could be negotiated, it would not necessarily protect CASs in the event of a claim for breach of privacy.

EXPERIENCE IN OTHER JURISDICTIONS

Ontario is unique in that mandated child protection services are delivered by third-party transfer agencies, and not directly by a ministry or department of government. The general freedom of information and protection of privacy legislation that applies to provincial ministries does not apply to CASs. Part VIII was intended to fill this gap, but has not been proclaimed (with the exception of s. 183).

PROPOSED RESOLUTION

Legislation dealing with record-keeping and disclosure is required. It needs to be child welfare specific, and address, in particular, the seamless sharing of information by Children's Aid Societies for their mandated purposes, as set out in s. 15(3) of the *CFSA*. Thus, it should be included in the *CFSA*, which has been repeatedly described as a "complete code" for matters relating to the protection of children.

More specifically, OACAS recommends that the following elements be incorporated into an amended Part VIII:

**a) Collection of information**

The principle that information about a person should be collected directly from that person, or from others with the person's knowledge and consent wherever possible, reflects a best practices

[5] *CFSA*, s. 72(1)
[6] *CFSA*, s. 72(7)
[7] For example, subject to vetting by the Ministry of the Attorney General pursuant to the R. v. Wagg decision.

approach in the social work field. It must be recognized, however, that there are circumstances, particularly in the course of an investigation or assessment of allegations that a child is in need of protection, in which it is impracticable to comply with this approach. A revised Part VIII must permit Children's Aid Societies to collect information for the purpose of carrying out their statutory functions without consent of the subject of the information, and indirectly (i.e., from other sources, not from the subject himself or herself).

**b) Special treatment of CASs**

An amended and proclaimed Part VIII is likely to apply to all service providers governed by the *CFSA*. OACAS believes that in light of the legislated mandate given to Children's Aid Societies, the rules for disclosure of information by one CAS to another CAS should be different than the rules for disclosure by a CAS to others and the rules for disclosure by other service providers to CASs. The seamless flow of information among Societies should apply for the purposes of all functions mandated to Children's Aid Societies.

OACAS recommends that the legislation treat all CASs as extensions of one another for the purpose of providing services and permit full information sharing among Societies without the need for consent and without limitation. Further, there should be statutory provision barring claims related to information sharing among Societies, as long as that sharing is done in good faith for the purpose of carrying out a mandated CAS function.

**c) Access to records**

An amended and proclaimed Part VIII should give open access to the person to his or her own record, subject only to certain enumerated limitations. The following are some examples of exceptions or limitations on a person's right to gain access to information about himself/herself that would be important to include:

- no access to information that would identify a referral/reporting source who is not a person who performs professional or official duties with respect to children, if that source requested anonymity;
- no access if, in the assessment of the Society, access might cause harm to the person or to another person;
- no access to identifying information about other persons who have not given consent, except where the other persons are or were members of the same household, and the information is in a mixed record.

**d) Disclosure of information**

An amended and proclaimed Part VIII should permit disclosure of information to others only with the consent of the subject and as required or permitted by law. A court order for production of a CAS record to someone is one example of disclosure "required by law." Providing information to ministry reviewers under Part I of the *CFSA* is another. Disclosure "as permitted by law" would cover situations in which a CAS has discretion to disclose information for the purpose of carrying out its statutory functions, for example, but does not have a positive duty to do so.

OACAS recommends that an amended and proclaimed Part VIII permit disclosure of information to others only in accordance with the legislation. Disclosure should be permitted (a) with the consent of the subject, (b) as required by law, and (c) in certain other enumerated circumstances, including (but not limited to) the following:

- to police in the course of a joint investigation;
- to a professional college investigating a complaint related to service provided by an employee of a service provider;
- in order to prevent imminent harm to a person;
- for the purpose of protecting a child or children;
- for the purpose of searching for and securing a placement that is in the best interests of a child, including a kinship arrangement.

It is recommended that special provisions be made with respect to disclosure of resource files containing assessments and home studies of potential and prospective caregivers by way of adoption, fostering and kinship service that recognize the sensitive nature of these records and the unique non-protection status of the subjects.

**e) Application to all records**

A modernized regime for record-keeping and disclosure should be prospective, in that the provisions concerning use, access to, disclosure of and storage/retention would apply to all activity from and after the proclamation date. For example, the provisions would apply to use and disclosure of information from the proclamation date, even if the information was collected before the legislation was enacted. The benefit is that a single regime applies to all the records.

On the other hand, it must be acknowledged that historically, not all records were created with the expectation that they would be open to scrutiny by the subject or by others. It is therefore recommended that there be some differential treatment of information collected before the enactment of governing legislation, in that the right of correction/disagreement (see below) should not apply to information before the new provisions are proclaimed.

**f) Correction, disagreement by subject**

It is recommended that provisions similar to the scheme set out in subsection 55(10) of *PHIPA*, regarding correction of the record, be incorporated into Part VIII of the *CFSA*. Those provisions give a person with the right of access to a record, the companion right to request a correction. The record keeper, who determines that a correction is warranted, is required to make corrections without obliterating or expunging the original record, by one of the means described in the section. It is further suggested that an alternative mechanism for recording a statement of disagreement on the file be included. Such a provision would cover situations in which the record keeper does not agree with a correction requested by the subject and would serve to reduce the number of requests for third party review of the decision refusing to correct that might otherwise result.

While service providers under the *CFSA*, and in particular CASs, come into possession of records of other systems, obtained in the course of carrying out their mandate (e.g., medical records; psychological reports; police records) which become subsumed in the record, there should not be a duty to make corrections to third party records in the possession of service providers.

**g) Compliance review**

Fair information practices dictate that there be a mechanism for outside scrutiny and challenging compliance by a record keeper. OACAS holds the view that the issues faced in relation to information, when dealing with services to children and families, are unique in that there are often competing privacy interests involved. For this reason, OACAS recommends that the provisions for review of compliance with Part VIII should give recourse to a specialist tribunal with knowledge of the child welfare context. Further, any balancing of interests must include a consideration of the protection, well being and best interests of children, as set out in section 1 of the *Act*.

OACAS recommends that existing mechanisms such as review by an internal complaints panel in the first instance followed by recourse to the Child and Family Services Review Board, should be utilized for the purposes of complaints related to the application by CASs of the revised Part VIII.

**h) Retention**

It is recommended that in order to ensure consistent treatment of all persons upon whom rights are conferred by Part VIII, standardized expectations related to retention of various records maintained by service providers under the *CFSA* should be developed and set out in the statute.

OACAS recommends that Part VIII clearly set out a schedule for the retention of records created and collected under the *CFSA.*

**i) Children's rights regarding information**

It is acknowledged that the trend in legislation is towards a capacity-based model for giving/withholding consent.[8] Notwithstanding this trend, OACAS proposes that the regime for giving consent to collection, use and disclosure of records under the *CFSA* be based on age, and not on capacity, for the following reasons:

- the children and youth receiving protection services are particularly vulnerable;
- many other provisions in the *CFSA*, including provisions related to giving consent under Part II, Part III and Part VII, are age-based, so this approach is consistent with the *Act,* as a whole;
- CASs, in particular, are mandated to provide involuntary services, and in this context, giving children a veto over information disclosure is contrary to the duties imposed on CASs;
- a capacity-based model will require the creation of a mechanism for reviewing the determination of capacity and adjudicating upon objections.

OACAS recommends that Part VIII be amended and proclaimed, so as to give a child of the age of 12 years or older, rights with respect to information about himself/herself, as follows:

- the right to request that specific information not be shared with his or her parents;
- the right to access his or her own file, including information about members of the child's family with whom the child resided in the same household, for the period of such joint residency.

OACAS recommends:

- a parent can access information about his/her child until age eighteen, subject to the child's right to withhold specific information, provided the child is not a Permanent ward (see below);
- for Permanent wards, a parent with an access order may obtain the information that is sufficient to give life to the requirement in subsection 61(5) that the parent's wishes concerning "major decisions" be taken into account. This should not give parents with access to a Permanent ward access to the entire child file; and
- after a child turns eighteen, the child's consent is needed to disclose information about the child to any person.

[8] Capacity-based models for giving or withholding consent include the *Health Care Consent Act*, *1996* and the *Personal Health Information Protection Act*, *2004*.

**j) Former wards**

Former children in care of Societies and in particular, former Permanent wards, are currently disadvantaged in terms of access to information, as compared to a person who moved on to adoption. The latter group has a clear right to information and a process for asserting those rights, while those who grew up in care are often unable to access information about their family of origin without the family's consent. There is no mechanism that would enable such consents to be obtained. It is proposed that, notwithstanding other general provisions about access to and disclosure of information, former Permanent wards and adults formerly in the care of CASs be given the same rights to information about their families as adult adoptees.

**k) Record Searches and Fast Track Information System**

CASs are required by a ministry Directive to upload identifying information to the Fast Track Information System (FTIS). Regulations require CASs to check the FTIS when conducting a protection investigation. The Directive on the use of FTIS, however, prohibits access to the system for any other purpose, such as assessing fostering or adoptive applicants, or those proposed as kinship service providers. This current inability to check the available database, even with consent of the persons applying to foster, adopt or provide kinship care, exposes children to unnecessary risk. In response to the many concerns raised by CASs in relation to child safety and potential liability, OACAS has repeatedly communicated to the ministry that its Directive restricting CAS usage of FTIS requires amendment, so that CASs can be authorized to use a "reliable mechanism that has the capacity to screen out potential caregivers, who may have a history of abusing or neglecting other children."[9]

OACAS recommends that CASs be authorized to search the Fast Track Information System in order to screen applicants for fostering, adoption and kinship care placements.

**l) Notice of Information Practices**

In keeping with modern approaches to information and privacy practices, the revised Part VIII should contain provisions related to giving notice of an agency's record-keeping and disclosure practices to clients, community partners and the public. Added transparency with respect to this aspect of CAS work is necessary to enhance public confidence in the role played by Societies in the protection of the most vulnerable members of the community. In addition, it is an established principle that, particularly where steps must be taken without consent, notice may fulfill the requirements of due process and fairness.

[9] See, for example, letter of June 23, 2003, written by Jeanette Lewis to Suzanne Hamilton, former Director of Child Welfare.

Advising clients as to its information practices is consistent with the strengths-based approach encouraged by the Transformation Agenda. This will be particularly important if new statutory provisions confirm the seamless sharing of information between CASs.

# Age of Protection to Age 18

## ISSUE

Sixteen and seventeen year old children who may be in need of child protection services are not afforded the same access to protective services as other children in Ontario.

## BACKGROUND

Ontario's definition of child in Part III of the *Child and Family Services Act*[10] is inconsistent with Article 1 of the *United Nations Convention on the Rights of Children*[11] and other provincial[12] and federal[13] legislation.

Child welfare advocates have urged the Ontario Government for many years to increase the age of children in need of protection from 16 to 18, in keeping with legislation in many other provinces and territories.

- This creates situations whereby a 15 year-old child being abused by a caregiver is allowed protective services under the Act while a 16 year-old child suffering similar abuse is not.
- The *Children's Law Reform Act* and the *Divorce Act* allow parents to gain custody of a child aged 16 or 17, yet would prevent a Children's Aid Society from intervening if a child under such a custody order were in need of protection. This creates a gap in services and a child in these circumstances may be required to live independently to escape the abuse.
- Children in care, when given the voice, have indicated their desire to be protected and parented beyond the age of 16.[14]

Of the nine enumerated statutes administered by the Ministry of Children and Youth Services, five have a definition of child and, of that, four state a child is under the age of 18. The *Child and Family Services Act* defines child as being under 18, but then excludes those children from protection under Part III of the Act.

According to OACAS Children in Care Fact Sheets, as of March 31, 2008, 2,939 children aged 16 and 17 were in care, representing 13.3% of the 17,945 children in care.[15]

Statistics Canada reports that children aged 16 and 17 were responsible for 53% of all cases before youth courts in 2002/03.[16] That figure rose to 56% in 2006/07.[17]

[10] Section 37.(1) *Child and Family Services Act* R.S.O. 1990, c. 11 as amended
[11] Article 1 United Nations Convention on the Rights of Children, ratified by Canada January 12, 1992
[12] *Parental Responsibility Act*, 2000, S.O. 2000 c.4, *Children's Law Reform Act*, R.S.O. 190 c. C. 12, *Rescuing Children from Sexual Exploitation Act*, 2002, S.O. 2002 C. 5
[13] *Divorce Act*, R.S.C. 1985, c. 3
[14] Youth Policy Advisory and Advocacy Group, news release June 5, 2008
[15] OACAS 'Child in Care Fact Sheets as at March 31, 2008' July 2008
[16] Statistics Canada, Catalogue no. 85-002-XPE Vol. 24, no. 2
[17] Statistics Canada, Catalogue no. 85-002-XIE Vol. 28, no. 4

ANALYSIS

Apart from the restricted definition in Part III and under s. 29 (Voluntary Services) in Part I of the *CFSA*, there is no legislative impediment to the proposed change. In fact, a strong argument can be made that the change would harmonize the treatment of this age group with other legislative initiatives, including education[18] and protection from sexual exploitation. It is also a logical extension of the *Ministry of Children and Youth Services Strategic Framework*, released in the spring of 2008[19], which identifies safe outcomes for those under the age of 18 as a priority.

Increasing the age of protection to age 18 would also create consistency with other Ontario legislation. The logic in determining that, in Ontario, a person under the age of 18 is a minor and offered special consideration under the various Acts, yet could not qualify as a child in need of protection, is difficult to reconcile. Under the *Parent Responsibility Act*, parents are responsible for their children until the age of 18. The *Children's Law Reform Act* and the *Divorce Act* allows parents to gain custody yet would prevent a Children's Aid Society from intervening if a child under such a custody order was in need of protection. This is an untenable situation that would result in a child being forced in such circumstances to live independently to escape abuse. Children's Mental Health Services, the Ontario Child Benefit, Office of the Children's Lawyer and Human Rights legislation all reference children as being under the age of 18.

The Human Rights Tribunal of Ontario has weighed in on the subject of age discrimination in the context of the cases that were referred to it by minors who were afflicted with Pervasive Development Disorders.

The comments and analysis of Adjudicator Patricia E. DeGuire in her June 23, 2006 interim decision involving Arzem et. al. and Her Majesty the Queen in Right of Ontario[20] are worth consideration in the context of this debate.

The Ontario Human Rights Commission in Arzem at para. 57 stated:

> "The fact that the Court was dealing with corporal punishment of children does not negate McLachlin C. J.'s conclusion that children, as a group, are 'highly vulnerable'."

Writing for the majority at para.58 McLachlin C.J. concludes:

> "Children need to be protected from abusive treatment. They are vulnerable members of Canadian society and Parliament and the Executive act admirably when they shield children from psychological and physical harm. In so acting, the government responds to the critical needs of all children for a safe environment. Yet, this is not the only need of children. Children also depend on parents, teachers for guidance and discipline, to protect them from harm and to promote their healthy development within society. A stable and secure family and school setting is essential to the growth process."

[18] Education Act S.O.
[19] Realizing Potential: Our Children, Our Youth, Our Future. Ontario Ministry of Children and Youth Services Strategic Framework 2008-2010, Spring 2008.
[20] Arzem v. Ontario (Community and Social Services), 2006 HRTO 17 (CanLII)

Another telling attempt to provide stop gap measures to protect these children can be found in Arzem where at paras 73 and 74 the Commission states:

> "Another argument Ontario presents is that the legislature chose to retain the age of 18 as the age of majority, but amended the code to address situations where 16 and 17 year olds were no longer under their parent's protection, and thus had to assume financial responsibility for themselves: subsection 4(1). Such children, Ontario argues, were often denied accommodation in the private market and had no recourse under the code. Further, Ontario argues that easily, one can name numerous private enterprises with "perfectly legitimate reasons for limiting or regulating the goods and services they might offer to children depending on their age." It is noted that in allowing certain minors to enter into contracts for accommodation, the legislature hastened to protect private enterprise by making said minors legally responsible for contracts of accommodation entered into by them: 4(2)."

It cannot be said with any conviction that at age 16 or 17, where a child has removed herself or himself from parental responsibility and must seek a livelihood to support herself or himself financially, the risk of harm is minimal or that he or she stands in a more advantaged position because of their youth. As noted above, a child is highly vulnerable to discrimination and needs protection of the code with respect to employment. The Code, as it is now, "does not recognize that children are highly vulnerable to discrimination with respect to employment and are children in need of protection, and thus, extend such protection to them."

Again at para. 117

> "Ontario submits that to comply with the effective date of section 15 of the Charter, after reviewing over 700 statutes, the legislature retained age 18 as the age of majority because it recognized that it is an 'age that represents a point at which the risk of harm to young persons because of their age is minimal'. Nonetheless, it chose to expand the definition of age for children 16 and 17 who were no longer under parental control and needed to contract for accommodation and occupancy."

It is inconsistent that Ontario would go out of their way to protect children from economic predation but not from possible physical or sexual abuse by their caregivers.

RESEARCH

There is ample justification for the extension of the age of protection when one surveys judicial interpretation of the need to protect children.

Madam Justice McLachlin's comments approving state intervention to protect children does not limit itself to the first 15 years and 364 days of a child's existence.

Research of existing Ontario legislation confirms that a significant number of Provincial and Federal Acts favor age 18 as the demarcation for the passage from child to adult.

In addition to judicial and legislative consideration of the issue, there is a body of work that also favors the extension of the age of protection to 18.

The Report of the Panel of Experts on Child Protection in March of 1998 also favored the expansion of Part III to include children aged 16 and 17.[21]

The U.S. Department of Health and Human Services 2007 Report, based on data from 50 states, indicates that in the Federal Fiscal Year 2007 the "victimization rate of children in the age group of 16-17 was 5.4 per 1,000 children in the same age group." [22] Their Adoption and Foster Care Analysis and Reporting System (AFCARS) Report indicates that in 2006, out of the 303,000 children that came into care, 11% or 33,891 were aged 16 and 17.[23]

Empirical evidence is difficult to extrapolate from existing Canadian research. It is likewise challenging to quantify in terms of money or social worth the value to be attributed to the extension of the age of protection to age 18.

British Columbia produced a report in 2002 that evaluated its Youth Agreement Program. While it was acknowledged as not having met the requirements of a conclusive study, it reported that youth who had engaged in such agreements not only reported their own satisfaction but that 87% reported decreased criminal activity and only 32% were dependent on provincial government assistance.[24]

## EXPERIENCE IN OTHER JURISDICTIONS

Other provinces, states in the United States, as well as many other jurisdictions, have set the age under which children may be found in need of protection at 18. This appears to be philosophically consistent with the United Nations Convention on the Rights of Children.

In reviewing the British Columbia Legislation[25] and Standards, it appears that a flexible approach to the response to an investigation into whether a child aged 16 to 19 is in need of protection may provide some insight into a solution as to how best serve those children. The Standards provide for a "youth service response" that encompasses alternatives to care but that protect and address the youth's immediate needs.[26]

## PROPOSED RESOLUTION

OACAS recommends the definition of child, as set out in section 3(1) of the *Child and Family Services Act*, be applied to Part III of the *Act* and that the definition of child under section 37(1) be removed.

[21] Protecting Vulnerable Children, Report of the Panel of Experts on Child Protection, March 1998, pg. 52
[22] U.S. Department of Health and Human Services, Child Maltreatment 2007, Chapter 3
[23] U.S. Department of Health and Human Services, AFCARS Report 2006.
[24] British Columbia Ministry of Children and Family Development, Evaluation of Youth Agreement Program, 2002
[25] *Child, Family and Community Services Act*, [RSBC 1996] Chapter 46
[26] Child and Family Development Service Standards, April 19, 2004

## Post Adoption Access to Former Crown Wards

### ISSUE

There is a general concern regarding the financial and emotional risks of continuing litigation that may need to be managed by adoptive parents who could end up going to court to respond to applications for access under the *Children's Law Reform Act (CLRA)* that are initiated by natural parents or kin who become unhappy with the terms of an openness agreement, or other consensual arrangements for post adoption contact that may develop amongst the parties. There is a general view that these concerns continue to hinder opportunities for adoption openness.

### BACKGROUND

Prior to the introduction of the Bill 210 amendments, the Court decided a number of cases in which orders for access were made pursuant to the *Children's Law Reform Act* in respect of former Crown wards who had been placed for adoption in favour of birth family members. These orders were made despite the prohibitions in the *CFSA* against orders for access in favour of birth family members in circumstances where the subject of the order was a former Crown ward placed for adoption. Some of these cases turned upon the view of the Court that there was a post adoption course of contact that gave rise to new rights on the part of birth family members that were in no way impacted by the provisions of *the Child and Family Services Act*. In other cases, access orders to former Crown wards placed for adoption were made on the basis of evidence that the birth family's agreement to the Crown Ward Order was induced by, or predicated upon promises or expectations of post adoption contact that were not being fulfilled post adoption. Children's Aid Societies have found that this line of cases continues to cause lawyers offering advice to prospective adoptive parents to hesitate to recommend any plan for adoption openness that involves post adoption contact. This hesitation is based on concerns that adoptive parents may find themselves defending access applications brought under the *CLRA* by birth family members who may hope to obtain a better outcome than they were able to achieve through an openness agreement or order made under the provisions of Part VIII of the *CFSA*. As a result of this advice, prospective adoptive parents are often hesitant to consider any plan for open adoption that will involve direct contact with birth family members. It is believed that this problem would likely be resolved if the *Children's Law Reform Act* were amended so that persons who would have been entitled to apply for an order of access to a Crown ward under Part III of the *CFSA* were clearly barred from applying for an order of access to the same child under the *Children's Law Reform Act*.

### PROPOSED RESOLUTION

OACAS recommends the *Child and Family Services Act* and the *Children's Law Reform Act* be amended so that individuals who were not successful in obtaining an order for access to a Crown ward under Part III of the *CFSA* be barred from applying for an order for access to the same child under the *CLRA*.

# Children's Aid Society Boards of Directors Indemnification

## ISSUE

Members of Children's Aid Society Boards of Directors have insufficient indemnification, impacting the stability of volunteer Boards and their ability to attract new Board Directors.

## BACKGROUND

Children's Aid Society community-based volunteer Directors of Boards require legislated protection from risk of personal liability when acting in good faith. The *Public Hospitals Act* and *Police Services Act* provide indemnification to directors of hospital boards and police services boards, respectively. In contrast, members of Boards of Directors of Ontario's Children's Aid Societies are not provided this same protection, yet are required to manage a multitude of high risk matters as part of their ongoing responsibilities.

Many Children's Aid Societies, as a matter of routine business, rely on lines of credit throughout the year to bridge between ministry cash flow and costs. Historically, banks would approve these unsecured lines of credit as they had confidence that government would pay the full child welfare costs. Increasingly, Children's Aid Societies are being asked by government to rely more on their lines of credit, and to increase their lines of credit. Concurrently, Children's Aid Societies are being told by government that year-end debts will not be covered. Banks are also hearing this message and are now becoming reluctant to approve new lines of credit or increase loans. The MCYS advice to increase unsecured loans in the face of funding constraints has caused great concern among volunteer community board members who worry about their personal liability for costs, and for decisions that could compromise services.

Protection from liability, in statute, is critical to ensuring the stability of volunteer Boards and the continued operation of Children's Aid Societies. The current absence of indemnification, in statute, impacts Children's Aid Societies ongoing ability to recruit those members of their community, skilled in governance, to become Board Directors.

## PROPOSED RESOLUTION

OACAS recommends the *Child and Family Services Act* be amended to provide personal indemnification for individuals serving on Children's Aid Society Boards of Directors. Indemnification provisions should extend to a Children's Aid Society, as a corporation.

## Extended Care and Maintenance Eligibility and Support through Age 24

ISSUE

Former Crown wards are not offered the same supports and services as are offered to children who remain with their biological families.

Extended Care and Maintenance is currently approved until a youth's 21st birthday. It is recommended that this age be extended until a former Crown ward's 25th birthday.

BACKGROUND

Crown wards at age 18 years, those who were the subject of a customary care agreement at age 18 years or s. 65.2 custody order at age 18 years, may receive financial and/or clinical support through an Extended Care and Maintenance Agreement pursuant to s. 71.1 of the *Child and Family Services Act.* Currently, this Agreement may exist until the young person's 21st birthday with the consent of the young person, following CAS determination of eligibility according to criteria established by the Ministry (Section 13 (4) *Ontario Regulation 206/00* amended to *Ontario Regulation 523/06*).

Crown wards whose orders are terminated prior to attaining 18 years of age are not eligible for Extended Care and Maintenance. The orders are terminated, for the most part, by the desire of the youth to be independent of the institutional parent and their desire to decline the offered services. Youth in this age group in these circumstances are not necessarily making decisions that are in their best interest. Many such youth reconsider their decision, but unfortunately, it is too late for such sober second thought as their "safety net" of support and services through Extended Care and Maintenance is not available to them. Studies show this group is the most vulnerable for becoming homeless subsequent to the termination of their Crown wardship status.

Former Crown wards, those who were subject to a customary care agreement or s. 65.2 custody order, as described above, are supported to attend post secondary education. It is not possible to complete this education by age 21. Studies in Ontario indicate that many youth in care are not completing high school by age 21. Several studies and reports (e.g. Laidlaw Foundation; CWLC; YouthCAN; Toronto City Summit Alliance, Modernizing Income Security for Working Age Adults Task Force) have recommended an extension of supports beyond age 21. Several Canadian jurisdictions have extended the age beyond 21. Nova Scotia provides supports until age 24; Alberta provides support to 22 years; British Columbia provides support to 24 years; New Brunswick provides support post age of majority.

Across Canada, youth are requiring support, both emotional and financial, from their parents well into early adulthood. Many youth remain at home while attending post secondary education programmes due to the high cost associated with attending such programmes. It is becoming the norm for young people to seek professional and graduate degrees beyond an undergraduate education. It is not unusual for a young person to return home following the completion of a university education. The need for ongoing support for young adults is recognized in many areas, such as medical and dental

coverage for young adults in educational programmes, and court orders for financial support for children by parents while in continuing education programmes.

Many former Crown wards require emotional and financial support, even if they are not attending post secondary education. Many of these youth have suffered physical, sexual, and/or emotional trauma in their early lives. These young adults, due to these circumstances that required their placement in care, require ongoing support for longer periods of time. These young adults are vulnerable and have been shown to have high levels of homelessness, substance abuse, mental illness, early parenthood, lack of academic achievement, unemployment, and reliance on social assistance.

Greater support can produce improved outcomes for these young people as they strive to take their place in society as fully enfranchised and contributing adult members of their community.

ANALYSIS

The age of 21 years as a termination for support and services pursuant to Extended Care and Maintenance is an arbitrary cut off point with no foundation in research or experience, and is counter-productive to the objective of successfully transitioning youth to adulthood. Former youth in care in Ontario, through YouthCAN, and across Canada, through the National Youth In Care Network (now Youth In Care Canada), have been advocating for an extension of this limitation of services and support to those former youth in care who require such support. Their advocacy is based on their experiences as former youth in care and the realities of life that they have encountered as young adults.

There was policy work completed by the Child Welfare Secretariat as part of the "continuum of care", but this policy did not proceed through the approval mechanisms at the Ministry of Children and Youth Services. The current policy is fifteen (15) years old and is in need of review and revision. It is outdated and does not reflect the realities of Canadian society at this time, particularly in the area of guidelines for financial support, which places former Crown wards in to poverty at age 18 after Children's Aid Societies have invested tremendously in their outcomes in the preceding years.

The provision of service beyond age 21 requires a modernized parenting approach regarding the parental roles and responsibilities of the Province and Children's Aid Societies. This parenting approach needs to mirror the ways that families in our society parent and provide support to youth.

RESEARCH

Approximately 55 percent of young men and 46 percent of young women between 18 and 24 years old were living at home with one or both of their parents in 2003, with recent estimates suggesting that parents provide their young adult children with material assistance totaling approximately $38,000 between the ages of 18 and 34[27]. In comparison, young people in care have a very different life than young people growing up with their own families, thus requiring additional support to achieve the same

[27] Courtney, M.E., Dworsky, A., Pollack, H. (2007). When Should the State Cease Parenting? Evidence from the Midwest Study. *Chapin Hall Center for Children at the University of Chicago: Issue Brief #115.*

outcomes as their peers. Children who grow up in care need preparation for independence and the support of their social worker and child welfare agencies well into their twenties[28]. Tweedle found that youth in care face many challenges in making the transition from care to independence and that it is unrealistic to expect youth who have often suffered physical and emotional trauma in their early years to function independently with little or no financial support once they reach age 18[29].

The Foster Care Work Group recognizes that helping youth in foster care successfully transition to independence requires much more than just addressing their needs for shelter, food and safety. It requires intensive and coordinated efforts by many agencies and community organizations, as well as professionals, community leaders, and concerned volunteers, to provide the support and encouragement that these young people need to become engaged, responsible and productive adults[30]. According to Natis, research demonstrates that goals and career choices become integrated into a person's self-concept in adolescence. As a result, terminating support before youth in care have plans for achieving their adult goals decreases the likelihood of future success[31].

Rowden describes the advocacy that youth in care have been doing on their own behalf where they implore us to "treat us as you would your own kids" and when making decisions that affect them, ask "what would a good parent do?" The fear of leaving care was the most predominant concern of a group of 300 youth in care in 2006. This fear can interfere with youth progressing in school, making friends, and building positive connections. Rowden argues that not only should the age of protection and extended care be changed to support youth in care until they are ready, but that we need to change the philosophy of care to shift the focus from preparing youth to leave care to providing the best support possible for them to grow up[32].

Mark E. Courtney, the leading academic in the area of State support of youth in care transitioning to adulthood, conducted the Midwest Evaluation of the Adult Functioning of Former Foster Youth. This study provides evidence of the potential benefits to foster youth and to society, at large, of extending support and services. These include development of independent living skills to help youth with the transition to adulthood, further progress in education, more access to health and mental health services, decreased incidence of pregnancy, and decreased risk of economic hardship and criminal justice system involvement[33].

Recommendations from the OACAS Youth Leaving Care Survey (2006), an MCYS funded initiative that surveyed 300 youth and 300 CAS staff serving youth, recommended extending ECM funding and/or worker support to age 25, and ensuring that all former Crown wards be eligible to receive ECM supports

[28] Natis, G.D. (2002). Extended Care and Maintenance and Termination: When Parents Stop Being Parents. *OACAS Journal, 47(1), 26-29.*

[29] Tweedle, A. Youth Leaving Care – How Do They Fare? (2005). *Laidlaw Foundation. Modernizing Income Security for Working Age Adults; Toronto City Summit Alliance.*

[30] Youth Transitions Funders Group Foster Care Work Group with the Finance Project. Connected by 25 – A Plan for Investing in Successful *Futures for Foster Youth*. (2003).

[31] Natis, G.D. (2002). Extended Care and Maintenance and Termination: When Parents Stop Being Parents. *OACAS Journal, 47(1), 26-29.*

[32] Rowden, V. (2009). It's About Time: Rethinking our System of Care for Youth. *OACAS Journal, 53(1), 2-7.*

[33] Courtney, M.E., Dworsky, A., Ruth, G., Keller, T., Havlicek, J, Bost, Noel. (2005). Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19. *Chapin Hall Center for Children at the University of Chicago*

after they turn 18[34]. Tweedle also recommended extending ECM eligibility to 24 to allow youth to achieve higher educational attainment and work skills[35].

EXPERIENCE IN OTHER JURISDICTIONS

Many other jurisdictions, and other service providers, have recognized the need to provide additional support and have benefitted from improved outcomes, as a result. This has been substantiated by research conducted by the field in various jurisdictions.

Ontario has fallen behind these jurisdictions, including several other Canadian provinces, in its provision of services to this age group:

In British Columbia, wardship expires when the youth attains the age of 18 years. Youth can access an additional 24 months of support between the ages of 19 to 24 years. British Columbia's program agreements for youth aged 19 to 24 years can provide financial assistance and support services to those who want to continue their education, get job training or take part in a rehabilitative program. Youth are eligible for support for 6 months at a time for a cumulative period of up to 24 months.

In Nova Scotia, youth in permanent care and custody are eligible for the Educational Bursary Program until their 21st birthday *(Standard 6.9.6).* This program covers the cost of tuition, text books and related expenses, in addition to regular youth supports. An Extension to the Education Bursary Program *(Standard 6.9.6.1)* assists former youth in permanent care and custody, between the ages of 21 and 24 years, who have already begun their studies, to continue with them. Those former youth in permanent care and custody who voluntarily left care before their 21st birthday may return and apply to receive the Extension to the Education Bursary Program until their 24th birthday.

In Alberta, services to youth are provided beyond the expiry of permanent wardship. Youth are eligible for financial support for training and education up to 20 years of age, as well as living accommodations, financial support for the necessities of life, and other services up to 22 years of age.

In New Brunswick, support for youth enrolled in educational programs, or if they are not self-sufficient by reason of physical, mental or emotional ability, is available after the expiry of permanent wardship.

The United Kingdom, through the *Children (Leaving Care) Act 2000*, provides for support of youth to age 24 years for those engaged in educational or training programs by providing expenses for living, educational supports and social work support.

In addition, the United States has found it beneficial to provide services to this age group to improve outcomes for youth. Below are further examples of services being provided to youth:

In Oakland, California, *First Place for Youth* provides services to youth 16 to 23 years of age who are preparing to leave or who have recently left care. Youth work on education and employment goals,

[34] OACAS. Youth Leaving Care: An OACAS Survey of Youth and CAS Staff. (2006).

[35] Tweedle, A. Youth Leaving Care – How Do They Fare? (2005). *Laidlaw Foundation. Modernizing Income Security for Working Age Adults; Toronto City Summit Alliance.*

healthy relationships, effective communication, et cetera. They provide housing, case management, community resources and advocacy.

In New York, the *Children's Aid Society* operates the *Next Generation Center,* providing services to youth who are between 14 to 24 years of age.

In Dallas, Texas, *Transition Resource Action Center* provides services to youth aged 14 to 24 years who are transitioning from care. Individualized support and housing are included as part of several areas of support they provide.

PROPOSED RESOLUTION

OACAS recommends extending the eligibility for Extended Care and Maintenance until a youth's 25th birthday, through an amendment to Section 13 (4) of *Ontario Regulation 206/00* amended to *Ontario Regulation 523/06.*

# Review of the *Child and Family Services Act*

*Recommendations of the Ontario Association of Children's Aid Societies*

January 2010