



Submission to the Standing Committee on Justice
Policy re Bill 89, an Act to amend the Child and Family
Services Act

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Introduction

CUPE Ontario represents 260,000 workers across the province working in municipalities, health care, school boards, social services, and post-secondary education, including more than 3,800 members who work at Children's Aid Societies.

Currently CUPE is the largest union in the child protection sector representing staff at 25 of Ontario's 47 Children's Aid Societies including the Children's Aid Society of Toronto (CAST), by far the largest child protection service in the province.

Overview

Bill 89, the Supporting Children, Youth and Families Act 2016, will replace the current Child and Family Services Act (CFSA).

CUPE recognizes the many positive aspects of the bill such as an increased recognition of the rights of children and youth; extended protection to older youth in need; the removal of stigmatizing language; and greater recognition of and support for indigenous children and youth and their communities.

We note that key amendments in the Bill have been motivated by a desire to restructure child protection in response to highly publicized criticism about uneven services, racial disparities, and child deaths.

We also note, however, that while efforts to restructure societies may reassure the public, CUPE is concerned that some of the deeply systemic factors underlying public criticism will not be adequately addressed by greater accountability measures, mergers and amalgamations and a statutory requirement for balanced books alone, even as appropriate as those things may be.

We have concerns that new, unspecified "prescribed requirements" being added to the definition of child protection workers may, like a relative overemphasis on regulation, and registration of child protection workers, inadvertently overemphasize the role of individuals while moving attention away from systemic issues including chronic CAS underfunding, increased workload, and onerous and ineffective information management systems. Calls for increased accountability, oversight and more staff training can be appropriate, but these are not the only solutions to deeply rooted and complex problems.

Most notably, the Bill does not sufficiently acknowledge the socioeconomic factors that place children and youth and their families under stress.

One US study indicates that children from lower socio-economic status (SES) families are five times more at risk for child abuse and neglect than their higher status counterparts.ⁱ In Canada, 16 studies during the past 25 years show some relationship between child poverty and economic disadvantageⁱⁱ In another Quebec based study, Canadian Census and child protection data was merged to create a neighborhood socioeconomic disadvantage index. Researchers learned that increased disadvantage raised the risk of out-of-home placement by 55% for children aged 0 to 9.ⁱⁱⁱ

As the Canadian Welfare Research Portal states^{iv},

Overall, being born into and growing up in a poor household negatively affects children in the short term and across the life cycle. These effects have major implications for society. Considering these consequences of growing up poor, much work remains for child welfare research. There is a great need to develop better and more consistent knowledge about how child poverty affects entry into the child welfare system and the extent to which anti-poverty interventions affect the risk of child maltreatment.

Important though more evidence may be, the Ontario government will already be aware of the effect of poverty on the well-being of children and youth and their families. Chronic unemployment, stagnant wages, the growth of precarious work and a persistent gender wage gap have reduced the income of parents while the cost of housing, electricity, transportation and other goods and services continue to climb. Crucial social support such as affordable housing and affordable public childcare is limited and difficult to access. The Ontario government has acknowledged increased poverty and income inequality in its policy initiatives to modernize employment standards, expand public pension coverage, and pilot guaranteed income schemes. Yet an anti-poverty focus is generally lacking in the broad objectives of Bill 89.

In part, what is missing with Bill 89, is that it is not sufficiently situated within a larger, comprehensive, inter-ministerial anti-poverty approach that would relieve the social and economic stress experienced by children, youth and their families while providing high quality, well-funded services for those who need them.

CUPE Concerns and Priorities

The goal of Bill 89 is described as modernizing statutes to replace the current Act. While the entire Act is of interest and concern to CUPE, the following specific provisions directly affect our members. We are asking the Minister to consider amendments to the following provisions.

Mergers and Amalgamations

Bill 89 will amend the Public Sector Labour Relations Transitions Act (1997) to automatically apply in cases of one or more amalgamations of societies. CUPE supports this amendment however we are concerned with other aspects of Section 47.

Section 47 provides the Minister with comprehensive new statutory powers to compel societies to amalgamate, transfer all or part of their operations, dissolve, or refrain from any action that would prevent the foregoing. To ensure compliance, the Minister can enact other measures including the appointment of an external supervisor. These powers will apply even in cases of voluntary amalgamations.

Mergers and amalgamations are complex, time consuming, and stressful for the employees who work in the affected organizations. Currently there are 47 CASs across Ontario including 16 new societies that have been created since 2011. Community based societies are considered by many including CUPE to be more flexible and responsive to local needs, create closer ties to families and

area service providers, reduce travel and wait times, and generally possess the necessary knowledge and insight to maximize services to child and youth and their families as close as possible to the location where they live.

CUPE has been assured in discussions with staff that the Minister's intent and preference is that mergers and amalgamations be voluntary. However, any merger or amalgamation will directly affect CUPE members. Mergers and amalgamations may result in disruptions including layoffs, changes to work assignments and workload, and new organizational policies and procedures. Yet according to the proposed Act, when a merger order is issued the Minister need only provide written notice to the employer who has thirty days to make a written response. Only in cases where a final order is issued is the society required to give notice to affected employees and their bargaining agent as well as making copies of the order available to the public.

CUPE strongly believes that Bill 89 should be amended to require a Society that receives a Minister's notice, to provide a copy of the notice to CAS employees and their bargaining agent in a timely manner and to ensure that employees, through their bargaining agent, have ample and equal opportunity to make a written submission for the Minister to consider before a final order is issued.

The input of employees and their bargaining is critical to sound decisions, particularly ones that may profoundly affect children and youth, their families, local communities, and front line staff. Though CAS employers and employees may share similar views, the employees' perspectives and insight may also differ. Front line staff bring unique insight and experience that can help guide sound legislative and policy changes. Providing employees and their bargaining agent with same notice and ability to respond as employers will strengthen the decision making and planning process for mergers and amalgamations.

Another concern is the need for a clear rationale for mergers and amalgamations that satisfies criteria beyond cost-saving. CUPE recognizes that decades of austerity-driven provincial government budgets have led to widespread public acceptance of the need to contain costs and increase organizational efficiency in public services. However, claims of waste and inefficiency are often unproven. In fact, decisions made based on projected cost savings and other "efficiencies" often lead to greater spending and poor organizational outcomes, as the recent experience with CPIN demonstrates.

There is a myriad of ways in which organizational performance and service delivery can be improved. **We urge that Bill 89 be amended to require that the Minister's Notice of an intended merger must be accompanied by a statement detailing the anticipated assessment of the impact on service delivery.** Though such an assessment may not be detailed in statute, we ask the Minister to consider adding criteria beyond cost-saving. These include maintaining consistency in service provisions; flexibility to meet local priorities; manageable workloads and job security for staff; the ability to build and maintain important relationships with local service providers; and the need to sustain strong ties with clients and their communities. Finally, any cost savings should be reinvested into front line services.

Further to the importance of assessing Bill 89 for its requirement to provide information to those affected by decision making about their future, and in the spirit of adding meaning to the proposed “child centered approach”, CUPE supports the amendment recommended by the Provincial Advocate for Children and Youth (PACY) that when Advisory Committee decisions are made as to a child’s placement, the statute should stipulate that the decision must be explained to the child “in a manner and form in which the child can understand”.

Binding Directives

According to information provided to CUPE by MCYS staff, the current Act provides “limited and blunt performance improvement tools”. The new Act expands the measures the Minister may take to improve accountability and oversight including the ability to issue a range of binding directives to societies with respect to financial and administrative matters and the performance of core functions. The Minister may also take a series of corrective actions for failure to comply with directives. These new powers include appointing or replacing board members and chairs and appointing a supervisor to temporarily operate a CAS when it is in the public interest to do so.

Societies may be required to submit a plan to comply with the Act or other regulations and directives, including accountability agreements. The Minister will be required to provide notice before taking these actions, and the CAS will have the right to respond.

As we have noted previously, front line staff and their bargaining agents have a wealth of experience and insight concerning the ways in which to improve organizational outcomes. For example, front line staff are acutely aware of the impact of funding levels and should have an opportunity to raise their concerns and make suggestions with respect to any directive concerning accountability agreements. In all cases, the Minister should carefully evaluate whether non-compliance is related to organizational intransigence or a genuine lack of capacity to respond due to insufficient resources or other factors. Front line employees are in a unique position to help in making this determination.

Another significant problem is that a Ministerial directive may conflict with provisions in a collective agreement. For example, directives concerning the agency’s funding may conflict with collectively bargained obligations. Performance related directives may also conflict with collectively bargained limits on workload or other areas.

Based on these reasons, **CUPE asks that the Act be amended to provide the same notice and right to respond as the employer to ensure the widest possible input and participation in the Minister’s decision-making process, and to ensure collectively bargained obligations always be respected.**

Accountability Agreements

Bill 89 maintains and places into statute the current requirement for societies to operate within their approved budget allocation. CUPE has grave concerns with the accountability agreements.

Concerns regarding the current funding model, while highly germane to this brief, will not be highlighted here. CUPE shares the concerns of other stakeholders who believe the funding model does not accurately reflect the cost of delivering high quality services, nor account for added financial pressure due to increased administrative requirements such as reporting on Performance

Indicators and quality improvement plans, and undertaking an assessment of shared services. Another major cost has been the introduction of CPIN, which has proven deficient on multiple bases and has added to rather than relieved the workload of front line staff. While CUPE will be seeking another opportunity to discuss our concerns and recommendations regarding CPIN with the Minister, we draw attention to it here as one example of unforeseen costs placing added financial pressure on societies.

Another cost that CUPE believes cannot be fully projected is expanding protection to youth aged 16 and 17. Forecasting the number of youth who will come into care and the services they (and their families) will require is an imprecise exercise at best. However, our concerns have been amplified by the lack of clarity in the bill regarding how services to this new cohort will be delivered. For example, we remain unclear about many questions such as precisely under what circumstances youth may be placed into care involuntarily, the lack of appropriate residential placements or other housing for them, the need for added police assistance when dealing with youth in high risk situations or who are being released from detention, the range of support to families and so on. CUPE believes that until services for the new cohort are fully rolled out and evaluated, accountability agreements must not be rigidly adhered to. Financial flexibility is key to preventing unnecessary risk to both youth and staff during the implementation period and beyond.

There are other examples of unforeseen financial pressure, such as sharp economic declines due to workplace layoffs or closures or steep increases in housing and utility costs that demonstrate the need for flexibility within the current accountability framework. **CUPE therefore asks the Minister to amend this section of the Act to create a mechanism to review accountability agreements in the event of unforeseen costs, including but not limited to spikes in demand for services or to provide, in the statute, an appeal mechanism to respond to these unforeseen increases in demand.**

Added Concerns

CUPE has added concerns that are not clearly addressed, or too vaguely addressed in the Act. Consequently, we do not have specific requests for amendments. However, these areas have serious implications for our members and we ask to be consulted prior to any related changes in future regulations or policy directives, regarding the following areas.

Lead Agencies

The lead agency model currently pertains to child and youth mental health services. However, CUPE is concerned that aspects of this model could be replicated in other areas. We wish to raise a concern with any service delivery model that would include devolving responsibility for allocating funding to a community based agency.

The current implementation of a lead agency model in child and youth mental health has demonstrated that devolving this responsibility is problematic. At full maturity, lead agencies were intended to allocate funding to a network of local service providers. It is our understanding that this responsibility has been removed from the roll out, and that service providers will continue to be directly funded through transfer agreements with the province to ensure accountability.

CUPE supports maintaining a direct funding relationship between the province and service providers. Responsibility for funding allocation places a large administrative burden on a lead agency, exposes the agency to risk when it has insufficient resources or experience to ensure accountability, will transform relations between lead agencies and service providers from one of collaboration to competition, and generally devolves administrative and oversight functions that should be the direct responsibility of government.

Adoption

CUPE is concerned that the Act does not sufficiently explain the Minister's intentions regarding adoption and is strongly opposed to any regulations that will extend private adoption services. **CUPE believes no aspect of child welfare, including adoption, under any circumstance be delivered on a for-profit basis.** Instead, societies should have the necessary resources to deliver the entire spectrum of adoption services, including post-adoption support to ensure successful placements.

CUPE agrees some of the OACAS points in their 2016 submission to the MCYS Adoption Enhancement Review^{1v} and shares the view that for-profit adoption services should never be permitted. Unfortunately, there are many persistent myths and false assumptions regarding adoption. Children and youth are frequently portrayed as “languishing” in care for years, or never able to be adopted at all. The reality is far more complex and related to factors including the age of the child or youth, if there are siblings, the level of required support for adoptees, added complexity related to open adoption, post-adoption support and more. Because these factors are less well understood, the inability to place children in adoptive homes is often attributed to deficiencies in society, for example inconsistent information across agencies and long wait lists for pre-training and home studies.

Conversely, private adoption agencies are portrayed as being able to respond more quickly and flexibly to prospective parents – but at a cost. OACAS cites the example of one private adoption practitioner who earned \$140,000 delivering pre-training services to 200 prospective parents – a service that is offered free by societies.

CUPE does have concerns with the OACAS recommendation for centralized intake. Ontario is a vast province with many rural and northern communities that are already underserved. CUPE is concerned that centralized intake may make it more difficult for prospective parents to access local services. We are also strongly opposed to any form of centralization that would result in the loss of jobs for our members. We support maintaining the current system while making the necessary changes to improve consistency of service across the province.

In fact, CASs are uniquely qualified to offer high quality adoption services. Adoption workers are highly trained and specialized, form sustained relationships with child and youth and prospective parents, and have the skills and experience to manage a highly complex legal and permanency processes required for successful adoptions. Once again, the root cause of the problem is underfunding for adoption and post-adoption services. Added resources for societies to perform adoption work is the solution, not privatization.

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Authorization

The current definition of a child protection worker has been changed to add, “who meets prescribed requirements”. However, the Act does not specify what those prescribed requirements may be, with details possibly left for future regulations.

The current authorization process for child protection workers was developed in the aftermath of child death inquests and criticism by the Auditor General. Coordinated by the OACAS, all newly hired child protection workers must complete an authorization program to perform the full scope of work. This includes six months of training and an examination.

CUPE supports the current authorization program, but is concerned that other “prescribed requirements” have been added in anticipation of further regulation of child protection workers. Currently, child protection workers are not required to be registered social workers as defined by the Ontario College of Social Workers and Social Service Workers (OCSWSSW).

CUPE is aware that college registration is the goal of OACAS, which also regard collective agreement language protecting current workers as an impediment to college registration. However, CUPE has long maintained that college registration is unwarranted and unnecessary. Child protection workers already are subject to internal complaint review processes as well as the Child and Family Services Review Board. Second, recruiting and retaining registered social workers in northern, rural and First Nations, Métis and Inuit communities may become more difficult. Third, multidisciplinary teams made up of staff from different education backgrounds and disciplines and practice perspectives are a strength not a deficit. The current authorization program ensures a common standard and consistency for child protection work.

Lastly, the push toward greater regulation, competency based training, and the disciplinary role of a college obscure the systemic issues facing the sector. As we noted above, the stress experienced by children and their families due to poverty, income inequality, and the lack of well-paid work and strong social programs will not be resolved by more training for child protection workers. In fact, the overemphasis on training is the same type of “supply side” argument that is used to explain why the jobless fail to find work. While CUPE supports a robust and well-funded training system for all workers, including those in child protection, training is not a magic bullet to solve deeply rooted systemic problems.

Religion

CUPE supports the intent of removing the term “religion” and replacing it with “creed” in an effort to be more inclusive and to harmonize the language of the Act with the language used in the Ontario Human Rights Code. However, CUPE also believes in the importance of recognizing existing religious-based societies and our members who work in them, who should be acknowledged. We would ask, therefore, that where it comes up, the word religion be bracketed and appear after the word creed.

Conclusion

CUPE supports those aspects of the Act that expand the rights of children and youth, particularly their right to be informed of decisions that affect them. We applaud the extension of services to older children and youth, the removal of stigmatizing language, and the recognition of the unique needs and role of First Nation, Metis and Inuit communities in child welfare. However, we believe the Act currently places relatively more emphasis on oversight and accountability, important as that is, and too little on solutions to deeply rooted systemic problems. The effects of underfunding will continue to constrain the efforts of members to deliver the services they are committed to providing. Lastly, we believe there must be renewed commitment across ministries to eradicate child poverty in the Province of Ontario.

ⁱ Sedlak A. et al. (2010). Fourth national incidence study of child abuse and neglect (NIS-4): Report to Congress. Washington D.C.: US Department of Health and Human Services, Administration for Children and Families.

ⁱⁱ De Boer, K., Rothwell, D.W., Lee, C. Child and family poverty in Canada: Implications for child welfare research. Canadian Child Welfare Research Portal. www.cwrp.ca/infosheets/child_poverty.

ⁱⁱⁱ Esposito, T. (2012). From initial maltreatment investigation: Exploring the placement and trajectories of children in the Quebec child protection system. McGill University, Montreal.

^{iv} De Boer, K., Rothwell, D.W., Lee, C. Child and family poverty in Canada: Implications for child welfare research. Canadian Child Welfare Research Portal. www.cwrp.ca/infosheets/child_poverty.

^v Ontario Association of Children's Aid Societies. Submission to the MCYS Adoption Enhancements Review. www.oacas.org/wp-content/uploads/2016/11/OACAS-submission-to-the-MCYS-Act