

**OACAS SUBMISSION**  
**for the Five-Year Review of the**  
***Social Work and Social Service Work Act, 1998***

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*March 2005*



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



# CONTENTS

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- INTRODUCTION.....1**
  - Ministry review questions .....1**
  - OACAS response .....1**
- GOVERNANCE OF COLLEGE .....2**
  - Need for separate legislation and colleges and to address imbalance in governance body .....2**
  - Need for clear delineation in scope of practice of social workers and social service workers .....2**
- COMPLAINTS .....3**
  - Parallel complaints, double jeopardy and ancillary matters .....3**
  - Frivolous, vexatious and abuse of process complaints.....4**
  - Qualifications of those hearing complaints.....5**
  - Prohibition on launching complaints where related litigation is pending or has been initiated .....5**
- COLLEGE EDUCATION AND OUTREACH.....6**
- CONCLUSION .....6**



# **OACAS Submission for the Five-Year Review of the *Social Work and Social Service Work Act, 1998***

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## **INTRODUCTION**

The Ontario Association of Children's Aid Societies (OACAS) represents 52 of the 53 Children's Aid Societies of Ontario. The work of child welfare is carried out by child protection workers drawn largely from the ranks of graduates of schools of social work. Some child protection workers are members of the Ontario College of Social Workers and Social Service Workers, while others express reservations about joining the College under the provisions of the current legislation.

We welcome the opportunity to provide input from the child welfare sector in the upcoming 5-year review of the *Social Work and Social Service Work Act, 1998 (SWSSWA)* to be conducted in 2005. Our concerns will be framed as responses to the two questions posed by the Ministry of Community and Social Services (MCSS) in its call for feedback from stakeholders.

## **Ministry review questions**

The questions as posed by MCSS are as follows:

- Are the provisions in the *Act* adequate for achieving the objectives of the *Act* (i.e., public protection, quality social work and social service work services and accountability)?
- What changes to the *Act*, if any, should be considered by the government to improve the operations of the College in carrying out its roles and responsibilities?

## **OACAS response**

With regard to the first question regarding the adequacy of the provisions of the *Act* to achieve the objectives cited therein (i.e., public protection, quality social work and social service work services and accountability), the OACAS has chosen to provide commentary and recommendations relating to the governance structure of the Ontario College of Social Workers and Social Service Workers.

With regard to the second question regarding improving the operations of the College in carrying out its roles and responsibilities, the OACAS has also chosen to provide commentary and recommendations relating to the

management and processing of complaints by the Ontario College of Social Workers and Social Service Workers, as well as proposals with respect to College education and outreach.

## **GOVERNANCE OF COLLEGE**

### **Need for separate legislation and colleges and to address imbalance in governance body**

While the work of both social workers and social service workers is valued and utilized within Children's Aid Societies, the OACAS wishes to register its concern regarding the governance structure of the Ontario College of Social Workers and Social Service Workers in the context of both protecting the public and strengthening the self-regulation of social work practice. It appears that over 90% of the membership of the College is comprised of social workers. Yet, because of the requirements of the *Act*, the composition of the governing College Council is fixed with equal numbers of both categories of worker. The College Council is required to be composed of 7 social workers, 7 social service workers and 7 members of the public appointed by the government.<sup>1</sup> As a result, the social work constituency (whose numbers are similarly high in the field of child welfare) is subject to rule by a minority whose work and training is sufficiently different to warrant concern.

*The OACAS recommends that there be separate Acts establishing separate colleges and regulatory machinery for the each of the social work and social service work professions. In the alternative, the OACAS proposes that the Act be amended to provide for a flexible governance structure that would avoid imbalance and permit Council representation according to proportionate membership.*

### **Need for clear delineation in scope of practice of social workers and social service workers**

The setting together of two different worker types under the same legislative governing body creates much confusion in the eyes of the public and diminishes the uniqueness of each profession. This single unified legislative scheme needs to be re-examined, with the optimal outcome being a separate and independent legislative scheme and two autonomous Colleges which would regulate each profession. If, however, it is deemed necessary for the same essential scheme to continue, then the *Act* should be amended, so that at the very least, the differences between the two professions can be clearly delineated to discourage confusion within the public domain and amongst professionals, and to ensure that the standards of practice established by each profession are recognized and maintained.

<sup>1</sup> See *Social Work and Social Service Work Act, 1998*, S.O. 1998, c. 31, s. 4(2).

***The OACAS recommends that there be separate statutes that regulate the social work profession, on the one hand, and the social service work profession, on the other. In the alternative, the OACAS proposes that the Act be amended to more clearly describe the differences in scope of practice of social workers and social service workers.<sup>2</sup>***

## **COMPLAINTS**

### **Parallel complaints, double jeopardy and ancillary matters**

Of primary concern to our members is the potential for imposing layers of complaints against a CAS worker. Under current legislation, a worker who is a member of the Ontario College of Social Workers and Social Service Workers and employed by a local Children's Aid Society (CAS), can be exposed to a kind of "double jeopardy" by virtue of being subject to both the CAS's internal complaints review mechanism, as required by section 68 of the *Child and Family Services Act (CFSA)*<sup>3</sup>, and also to a simultaneous or subsequent review by the College under the *SWSSWA*. The review conducted by the local Children's Aid Society makes available to the complainant hearings by both the Board of the CAS and by the Ministry of Children and Youth Services (MCYS). The worker under review will generally find even a single review to be exceedingly difficult and stressful. At the same time, the resources of a Society will be drawn upon heavily. It is our view that the potential requirement for a worker (and her/his employer) to submit to parallel reviews for the same occurrence is an unreasonable expectation. Other ancillary matters requiring attention include such considerations as the need to clarify what information CAS workers and CASs are obligated to disclose to the College when a complaint is initiated against a CAS worker, including what parts of the CAS internal complaints review procedure process must be disclosed.

***The OACAS recommends:***

- ***that the College require a complainant to exhaust the internal complaints review procedure of a CAS under section 68 of the CFSA before that complainant is eligible to pursue the same complaint with the Ontario College of Social Workers and Social Service Workers against the same CAS worker***

<sup>2</sup> See Zagdanski, Marlene, *Scope of Practice – Demystified*, in Ontario College of Social Workers and Social Service Workers Perspective, Fall/Winter 2004/2005, which represents a well-considered starting point.

<sup>3</sup> See *Proposed Child and Family Services Act Amendments: A Position Paper of the Ontario Association of Children's Aid Societies*, February 2005 (submitted as part of the 5-year review of the *CFSA* and which can be found on the OACAS website at [www.oacas.org](http://www.oacas.org)).

- *that there be a specification of those circumstances where the completion of a satisfactory review by another legitimate authority (such as that required under the CFSA) would eliminate the need for a parallel or subsequent review under the SWSSWA*
- *that there be a stipulation of the authority and timing of a College review in those situations where the CAS may be conducting an internal child protection investigation*
- *that there be specification in the SWSSWA as to the nature and scope of the obligation of a member worker to disclose confidential documentation to the College, having regard to corporate employer policies on confidentiality*
- *that the SWSSWA be amended to stipulate a prohibition against the disclosure to third parties or publication of any information filed with the College in respect of a complaint under investigation by the College*
- *that there be clarification that the only parts of an internal agency complaints review process that must be disclosed to the College are: the fact that the complaint was made; the number of times similar complaints have been made against the individual worker and/or the worker's corporate employer; the current stage and status of the agency internal complaints review process; and the outcome of the agency internal complaints review process.*

**Frivolous,  
vexatious and  
abuse of process  
complaints**

The availability of at least two levels of complaint against a worker, in a field of intervention characterized by high levels of emotion and conflict, opens an undesirable channel for the bringing of frivolous and vexatious complaints by those who are unsatisfied with the results of one review. While the *SWSSWA*, in clause 24(2)(b), does allow for the Complaints Committee of the Ontario College of Social Workers and Social Service Workers to refuse to consider a case which it deems to be “frivolous, vexatious or an abuse of process”<sup>4</sup>, it is unclear when such refusal might be invoked.

*The OACAS recommends that the SWSSWA be amended to provide an illustrative list of the kinds of complaints that could be considered to be “frivolous, vexatious or an abuse of process”, without being exhaustive in nature.*

<sup>4</sup> The Ontario College of Teachers has similarly introduced legislative protection against spurious claims against a teacher. See the *Ontario College of Teachers Act, 1996* at clause 26(2)(b).



**Qualifications of those hearing complaints**

The College membership pertains to a wide variety of functions, all of which fall under the rubric of social work. The field of child welfare, among others, represents a sphere of endeavour, which has developed an elaborate expertise peculiar to its practice. This expert knowledge and practice wisdom, steeped in a highly regulated legal mandate, conducted with attention to potentially volatile family dynamics, requires extensive knowledge and sensitized judgement on the part of the CAS social worker. It is, therefore, vital that the adjudicators of complaints against CAS social workers have a specialized appreciation of this child welfare environment.

*The OACAS recommends that those hearing complaints against CAS social workers be required to demonstrate a level of specialized knowledge and experience that reflects an appropriate understanding of the dynamics and complexity of child welfare work. In the case of a panel adjudicating a complaint against a CAS social worker, it is imperative that at least one of those panel members possesses a detailed knowledge of child welfare work in a CAS environment.*

**Prohibition on launching complaints where related litigation is pending or has been initiated**

The milieu of child welfare, by virtue of its mandate, is very often charged with conflict between workers and clients. While the OACAS supports the quality assurance of systems and professional standards, it would be helpful for the *Act* to specify more directly the extent and limitations upon what kind of complaints can be heard. Of particular importance is for the *SWSSWA* to be amended to explicitly prohibit persons from accessing the College's complaints process where the complaint touches upon the same subject matter as pending or existing litigation.

*The OACAS recommends:*

- *that the use of the College's complaints process be prohibited in those circumstances where the complainant has threatened, or is engaged in, litigation with the CAS worker and /or CAS in respect of the same subject matter*
- *that there be a thorough review of the College's complaints processes in order to identify any further reasonable categories of complaints for exclusion from the normal resolution and adjudication processes.*

## **COLLEGE EDUCATION AND OUTREACH**

Reports from the membership of the OACAS indicate that local Children's Aid Societies experience some confusion and lack of clarity with regard to the interpretation of various provisions in the *SWSSWA*. For example, there is uncertainty about when the duty to report the misconduct of a registered social worker to the College is activated, and conversely there is uncertainty about the legal authority of a CAS to report where an internal CAS review has discovered no wrong-doing on the part of the CAS worker. In addition, it is unclear what the nature and scope of the CAS obligation is with respect to releasing file material to the College, when a client has initiated a complaint against a CAS worker. It would be helpful if the College would provide, on a regular basis, continued outreach and periodic consultation with the CASs to assist them in understanding the parameters governing the duty to disclose as well as to give feedback about emerging issues and trends the College may be aware of over time. Periodic consultations of the College with CASs may be mutually beneficial in creating a fruitful forum in which issues relevant to social work and child welfare can be exchanged.

*The OACAS recommends that the Ontario College of Social Workers and Social Service Workers provide ongoing education and community outreach to its constituents in child welfare for the following reasons:*

- *to ensure clarification in interpreting the SWSSWA*
- *to share information as gathered by the College regarding trends and emerging practice issues*
- *to create avenues of consultation for mutual understanding of issues pertinent to social work, social service work and child welfare.*

## **CONCLUSION**

The OACAS supports the intent and objects of the *Social Work and Social Service Work Act, 1998*<sup>5</sup> and advocates for clarification and amendment to the *Act* on behalf of the College members employed by CASs. We have expressed concern for the governance of the College when it is comprised of two professional groups with very different scopes of practice. In addition, we suggest that further efforts of education and outreach by the College to the child welfare sector would assist CASs in understanding the functions, expectations and benefits of the College to social workers employed in CASs. Of greatest concern to

<sup>5</sup> See *Social Work and Social Service Work Act, 1998*, S.O. 1998, c. 31, s. 3.

the members of OACAS is the management and processing of complaints against CAS workers by the College, having regard to the “double jeopardy” of parallel complaint review processes being imposed on a CAS social worker by way of two distinct pieces of legislation, the *CFSA* and the *SWSSWA*.

It is hoped that the feedback from the child welfare sector will provide the Ministry of Community and Social Services with the information necessary to examine fully the relevant provisions of the *Social Work and Social Service Work Act, 1998*.

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