



MARY BIRDELL, EXECUTIVE DIRECTOR

PHONE: 416-920-1633 x8228

E-MAIL: birdsem@lao.on.ca

April 11, 2018

**VIA EMAIL**

Standing Senate Committee on Legal and Constitutional Affairs  
Senate of Canada  
Ottawa, ON K1A 0A6

Attention: Keli Hogan, Committee Clerk

**RE: Bill C-45: An Act Respecting Cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the “Cannabis Act”)**

Dear Ms. Hogan,

Thank you for your response to Justice for Children and Youth’s inquiry regarding making submissions to the Senate Standing Committee on Legal and Constitutional Affairs (the “Committee”) regarding Bill C-45: An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the “Cannabis Act”).

Justice for Children and Youth (“JFCY”) is requesting the opportunity to make written submissions to and give testimony before the Committee.

In response for your request for further information regarding JFCY’s proposed participation, we are pleased to provide the following information.

**About Justice for Children and Youth**

Justice for Children and Youth (“JFCY”) is a specialty legal clinic providing legal information, advice, and representation to children and young people concerning their legal rights and interests in a wide variety of legal areas. In particular, JFCY provides direct representation to young people dealt with under the *Youth Criminal Justice Act* (“YCJA”) and has significant experience and expertise regarding young people’s rights and interests in the criminal justice system.

As a children’s rights organization, JFCY is a frequent participant in law and policy reform initiatives, bringing forward expertise and perspectives with respect to children’s rights under international and Canadian law. JFCY has consulted directly with the federal government on issues relating to the *YCJA* and predecessor legislation, the *Young Offenders Act* (“*YOA*”), and has

55 UNIVERSITY AVENUE, SUITE 1500

TORONTO, ONTARIO

M5J 2H7

[www.jfcy.org](http://www.jfcy.org)

prepared numerous submissions for federal and provincial government committees considering the *YCJA* and *YOA*.

### **Proposed Submissions to the Senate Standing Committee**

JFCY wishes to bring forward its concerns regarding the children's rights implications of Bill C-45 to the Committee.

In particular, JFCY is concerned that the Cannabis Act, in unequally de-criminalizing cannabis use, exposes young people to disproportionate criminal liability, contrary to their rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and the United Nations *Convention on the Rights of the Child* ("UNCRC") to which Canada is a signatory, without accomplishing the Act's objective of protecting the health of young persons and restricting their access to cannabis.

Notably, section 8 of the Act decriminalizes possession of under 30 g of cannabis for adults, while young people continue to face criminal liability for possession of any amounts over 5 g. similar limits are imposed for distribution under section 9.

The Cannabis Act in effect criminalizes young people for conduct that would otherwise be permissible, but for their age, exposing them to greater criminal jeopardy than adults. It is therefore arguably unconstitutional. The unequal criminalization of young people creates a status offence, which offends section 7 of the *Charter* - in particular the recognized principle of fundamental justice that laws not be arbitrary - and section 15 by imposing discriminatory impacts on young people by virtue of their age.

While protecting the health and safety of young people is a pressing and substantial objective of the legislation, the unequal criminalization of young people is not rationally connected to that objective and in fact does the opposite, driving young people's cannabis use underground and to illicit markets while doing little to deter its use.

By contrast, the detrimental effects of criminal justice involvement for young people are well-documented and indeed form the basis of the *YCJA*. Criminalization is furthermore inconsistent with a harm-reduction approach endorsed by mental health and addictions professionals.

The Act's approach is inconsistent with the principles of the *YCJA*, in particular, that young people are entitled to special guarantees of their right and recognized as having reduced moral culpability for their conduct, that youth crime is to be prevented by addressing its underlying causes, and that the focus of young people's criminal justice involvement is reintegration and rehabilitation. The Cannabis Act fails to limit young people's criminal justice involvement or recognize their entitlement to special protection under the criminal law. It in fact does the opposite.

The Cannabis Act furthermore runs afoul of Canada's international commitments under the UNCRC, which are specifically incorporated into the *YCJA*. In particular, the Cannabis Act violates

Article 3, which provides that the best interests of the child must always be a primary consideration of any state action and must provide for a child's protection, care, and well-being. Over-criminalization of youth is inimical to this objective. Article 37 recognizes that arrest be a measure of last resort. Article 33 urges states parties to take appropriate measures to protect children from illicit drug use; exposing young people to disproportionate criminal liability does nothing to deter their use of cannabis or limit their access. To the contrary, reliance on criminalization and the criminal justice system diverts resources and focus from health and harm-reduction services as a means of health promotion and protection, consequently offending Article 24 of the UNCRC.

The Act will furthermore disproportionately impact young people who are already over-represented in the criminal justice system, as a result of racialization, indigeneity, poverty, mental health status, disability, and child welfare system involvement, offending the UNCRC's protections against non-discrimination, as well as section 15 of the *Charter*.

In sum, JFCY is concerned about the detrimental impact on young people's rights of the Cannabis Act and wishes to provide complete submissions to the Committee on these issues for its consideration.

Thank you for your consideration of this request.

Sincerely,



Mary Birdsell  
Executive Director



Jane Stewart  
Staff Lawyer