

SUBMISSIONS TO THE STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS:

Regarding

Bill 88

Child and Family Services Amendment Act (Children 16 Years
of Age and Older), 2013

CANADIAN FOUNDATION FOR CHILDREN, YOUTH AND THE LAW
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BILL 88: SUBMISSIONS OF JFCY

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A. Introduction

Justice for Children and Youth

Justice for Children and Youth (“JFCY”) is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. JFCY is a children and youth rights organization, promoting and defending the rights and dignity of young people. Since 1978, the clinic has provided legal representation to youth in Ontario under the age of 18 in the areas of child welfare, criminal law, constitutional law, human rights, education law, family law, mental health law, health law and income maintenance. The clinic also provides public legal education to youth and youth-serving agencies and has created numerous publications for young people.

JFCY prepares policy positions on issues relating to the needs of and experiences of its clients. JFCY also conducts test case litigation through interventions and applications on specific issues relating to the rights of children and youth. Through litigation and law reform projects, the clinic advocates for Ontario’s compliance with obligations under the United Nations *Convention on the Rights of the Child (“UNCRC”)*.¹

JFCY operates the Street Youth Legal Services Program (“SYLS”). Since 1999, the program has provided legal advice to more than 6,000 street involved youth between the ages of 16-24 years old on a wide range of legal matters. SYLS has also provided legal education to more than 12,000 street youth and street youth-serving agency staff, and taken part in advocacy and litigation on issues affecting street involved young people. A key component of the SYLS program is providing legal

¹*United Nations Convention on Rights of the Child*, 12 November 1989, UNTS 1577 at 3. (“UNCRC”)

options to homeless youth to help them find support necessary to stabilize their lives.

Many of the young people who seek the assistance of JFCY are ineligible for child welfare services simply on the basis of their age. Youth needing care after they turn 16 are left with few choices to provide for their safety and security, often leaving them with no option but the shelter system or the streets. The young person may need care for the first time, or may need care again after having been “out of care”. In either circumstance currently they generally have no access. The SYLS program sees many of these young people at shelters and youth drop-ins.

Child Welfare, Homelessness and the Canadian Legal Context – Ontario is an Outlier

JFCY is part of the coalition “43%”². The coalition’s goal is to contribute to the prevention of youth homelessness and increasing opportunities for security for young people through research and law reform activities. Over the last two years, the 43% coalition has conducted cross-jurisdictional research on child welfare services in Canada. The research found that Ontario remains the *only* jurisdiction in

²43% represents the percentage of homeless youth who have previously been in the care of a children’s aid society. See: Anne Tweedle, *Youth Aging Out of Care – How Do They Fare?* (Toronto: Laidlaw Foundation Report Briefing, 2005) at 7. The link between the high rates of youth in care who later become homeless is well established, but the causation related to failures within child protection legislation, policy and services leading to youth homelessness is less apparent. Coalition members include: Raising the Roof, the Canadian Homelessness Research Network, and interested individuals.

Canada that severely limits access to child welfare services for 16 and 17 year olds who are not already involved with a children's aid society.³

All but two Canadian jurisdictions offer entry into *both* protective and voluntary services to children 16 and older. Northwest Territories provides only voluntary services for 16 & 17 year olds⁴, and Ontario is the only Canadian jurisdiction that has neither protective nor voluntary services to non special needs children presenting for help at age 16 or 17. Sixteen and seventeen year old children in Ontario have fewer options available to them to access services and supports as compared to every other Canadian jurisdiction. If enacted, Bill 88 would make it possible for young people in Ontario to access voluntary services with children's aid societies, a change that is long overdue.

JFCY Supports Legislative Change

Based on the voices and experiences of our clients, our knowledge and experience advocating for the rights of children and youth, and our understanding of the legal framework for child welfare supports and services, JFCY supports legislative change that will: create a meaningful acknowledgement of our collective responsibility to protect the security and future of all young people by providing

³ Under the *CFSA*, "special needs agreements" are legally available to children ages 16 and 17. Special needs agreements are however, limited as they only apply to children that can demonstrate a 'special need'. As defined in s. 26 of the *CFSA*, special need means a need that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability. Special needs agreements must be approved by the Minister of Child and Family Services. A member survey conducted by the Ontario Association of Children's Aid Societies of Children's Aid Societies ("OACAS") indicates that only two special needs agreements are currently in place in Ontario (Interview with Wendy Miller, Senior Policy Analyst, OACAS, (1 December, 2013) in person), suggesting that they are very difficult to arrange.

⁴*Child and Family Services Act*, SNWT 1997, c 13.

child welfare services to all children and youth in need of protection; ensure that all children under 18, and can access and maintain child welfare supports and services; ensure that children who have received supports and services before they turn 18 will be able to access ongoing support equally, and; incorporate the *UNCRC* into Ontario's child welfare legislation. JFCY believes that *Bill 88, the Child and Family Services Amendment Act (Children 16 Years of Age and Older), 2013* represents an important step towards achieving these basic goals, and towards the goal of providing robust child welfare services to all children and youth in Ontario.

Bill 88 – Child and Family Services Amendment Act (Children 16 Years of Age and Older), 2013

Section 1 of the *Child and Family Services Act*⁵ (“*CFSA*”) defines its purposes. Bill 88 adds the recognition that services under the *CFSA* should be provided in accordance with the *UNCRC*. We applaud this.

Part II of the *CFSA* provides for voluntary access to child welfare services, primarily by “temporary care agreements”. Currently, no child 16 or older can access service by way of a temporary care agreement. Bill 88 amends the *CFSA* to make it possible for children who have turned 16 to access child welfare services even though they are seeking care for the first time, or are seeking to return to care after having been “out of care”. Bill 88 provides that a 16 or 17 year old child whose parent is unable to care for them may enter into a ‘temporary care agreement’ with a children’s aid society. Entry into the agreement is voluntary for both the child and

⁵*Child and Family Services Act*, RSO 1990, c C-11. (“*CFSA*”)

the children's aid society. The agreement expires when the child turns 18. The Bill does not provide for support or services beyond age 18; does not expand the duty to report a child in need of protection; and Bill 88 does not amend Part III (the protection services sections) of the *CFSA*.

B. Strengths of Bill 88

JFCY Supports Incorporating the *UNCRC*

Canada ratified the *UNCRC* in 1991, and it came into force in 1992. The *UNCRC* defines children as being under 18 years of age, and requires that all children be protected from all forms of violence, abuse and neglect. Ontario has ratified the *UNCRC* with respect to matters within provincial jurisdiction. In accordance with the *UNCRC*, all actions concerning children shall be taken with the children's best interests as primary consideration. Bill 88 would amend section 1, the "purpose" section of the *CFSA*, to clarify that services should be provided in accordance with the *UNCRC*.

JFCY is encouraged that Bill 88 incorporates the *UNCRC*, as doing so is another amendment to Ontario's child welfare legislation that is long overdue. However, **JFCY recommends** that section 1 of the Bill be amended to read:

1. (1) Section 1 of the Act is amended by adding the following subsection:

(1.1) this *Act* shall be interpreted in compliance with Canada's obligations under the *U.N. Convention on the Rights of the Child*.

It is our view that this statement more properly belongs in section 1 as an overarching statement of principle that applies to the act as a whole, as opposed to being added to the list of “additional” purposes that apply with reservation.

JFCY Supports the Voluntary and Consensual Nature of Services

Although it is crucial that child welfare supports and services be available for 16 and 17 years olds, it is also crucial that involvement with child welfare agencies be voluntary and on the consent of the young person. This approach is consistent with the developmental needs and legal rights of 16 and 17 year olds. For a variety of reasons, child welfare services may not be appropriate for all young people, even though they might qualify as children 16 or older whose parents are unable to care for them. Many young people have had negative experiences in the past with children’s aid societies, some may feel disenfranchised from children’s aid societies, some may want to maintain their privacy from child welfare services, and others may not be in a position to seek out services for other relevant and valid reasons. It is therefore important that any child welfare services provided to older children be provided on a voluntary and consensual basis. JFCY applauds the framing of the amendments in Bill 88 such that they require the consent of the 16 or 17 year old child.

More Comprehensive Reforms Require Further Consultation and Consideration

Bill 88 takes an important step in expanding child welfare supports and services to 16 and 17 year olds by making voluntary services under Part II of the

CFSA available. It does not expand services in more substantial ways by making protective child welfare services under Part III of the *CFSA* available to children over age 16. JFCY does seek legislative change that would ensure that the full array of child welfare supports, services and protections are available to young people 16 years and older. The maximum level of care ought to be accessible to all children in need.

JFCY acknowledges that broader reform efforts will require more complex amendments than are sought in this Bill and at this time. Changes of this nature are highlighted in the Ministry of Child and Youth Services' published report entitled, "Blueprint for Fundamental Change to Ontario's Child Welfare System"⁶. Carefully tailored amendments that would provide more comprehensive services, while caring for the unique and complex needs and vulnerabilities of the young people in question, will require more extensive consultations, research and careful planning. Bill 88 can be seen as an important step in a larger reform agenda, and JFCY supports Bill 88 being passed into law with the amendments recommended herein.

C. Bill 88 Requires Some Revision – Our Concerns and Recommendations

Obligation of Children's Aid Societies

Temporary care agreements are voluntary for the young person and for the responsible children's aid society. The proposed amendments would provide that

⁶Ontario, Ministry of Child and Youth Services, *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group*, (January 2013) at 21.

the young person and the society *may* enter into a temporary care agreement. The *CPSA* requires that child welfare agencies act in the best interests of the child and promote the protection and well being of the child. However, the voluntary nature of the service maintains the young person's vulnerable position vis-à-vis the society. This vulnerability can be addressed by placing an obligation on the society to enter into an agreement if the child agrees and if the child is unable to be cared for by the person in charge of their care. Specifically, **JFCY recommends** that section 2.(1) of the Bill should be amended to read:

2. (1) Section 29 of the Act is amended by adding the following subsection:

Same — child 16 or older

(1.1) Where a child who is 16 years of age or older voluntarily seeks to make an agreement, then the society having jurisdiction where the child resides shall make a written agreement for the society's care and custody of the child if the person who has custody of the child is temporarily unable to care adequately for the child.

This wording would make temporary care agreements voluntary for the young person, but mandatory for the society where the young person seeks assistance. Such a structure would reflect the unique needs of older children seeking care, and compensate for their vulnerabilities. As well it might serve to compensate for the fact that protective services under Part III are unavailable to 16 and 17 year olds for the time being.

Extended Care Services Must Be Available

Bill 88 as it is currently drafted does not provide for access to extended care services for the young people that it otherwise seeks to enfranchise. Section 71.1 of

the *CFSA* makes “extended care services” available to children who are or have been “Crown Wards” or “Society Wards” beyond age 18.⁷ In contrast children who have entered into temporary care agreements do not qualify for access to supports and services beyond 18. As drafted, Bill 88 would leave a young person who has signed a temporary care agreement without any remaining supports or services after they turn 18. The law creates inequality in services between children and youth who are Society and Crown Wards, and children and youth who are only parties to temporary care agreements, even if their personal circumstances are substantially similar.

JFCY recommends a remedy to this serious gap in care to 16 and 17 year olds entering into temporary care agreements by amending the Bill and adding section 2(6) to read as follows:

2. (6) Section 29 of the Act is amended by adding the following subsection:

(11) notwithstanding anything in this Act, children, 16 and 17 years old who have entered into a temporary care agreement, shall be entitled to extended care as provided for in section 71.1 and relevant regulations.

The provision of services should similarly follow current Directives and policy guidelines from the Ministry of Children and Youth Services. This change is necessary to provide equality in supports and services available to youth as they transition to adulthood rather than truncate their care at 18.

⁷*CFSA supra* note 2 at s. 71.1, and *Procedures, Practices and Standards of Service for Child Protection Cases*, O Reg 206/00, s. 13-14.

Time Limits and Restricted Agreements

Section 29(6) of the *CFSA* sets out time limits for which temporary care agreements can be entered into or extended based on a child's total time in care. The purpose of the subsection is to avoid children languishing in care without final decisions of Society Wardship or Crown Wardship being ordered. However, the application of these time limits on 16 and 17 year olds entering into temporary care agreements may unduly restrict or prohibit the 16 and 17 year old who was previously in care by limiting the amount of time that this new temporary care agreement can be in place. For instance if Bill 88 were passed into law, a plain reading of the revised *CFSA* would mean that if a 16 year old had been a society ward for 21 months at some point in the last 5 years, but had been out of care since then, they would none-the-less only be able to enter into a temporary care agreement for 3 months, at which point they would reach the aggregate 24 months. This restriction is fine for young people 15 and under who could be made a Society or Crown Ward when the aggregate time is reached, but for the 16 or 17 year old returning to care, they would be prevented from receiving the services and supports this Bill intends to confer. Surely this is an oversight as it clearly runs counter to the intent of Bill 88. **JFCY recommends** that the Bill be amended to add section 2(6) that would read as follows:

2. (6) Section 29 of the Act is amended by adding the following subsection:

Exception

(6.3) Subsections (6), (6.1), and (6.2) do not apply to a temporary care agreement made in respect of a child who is 16 or 17 years of age.

Section 29(5) of the *CFSA* is also problematic as it limits the terms of temporary care agreements to 6 months at a time, with maximum aggregates. Though Bill 88 amends this section to allow for an aggregate of 24 months for an agreement with 16 and 17 year olds, it may be more appropriate to also make this section non-applicable to agreements concerning 16 and 17 year olds. Considering that no protection services are available, a voluntary six-month contract with extensions may not form a robust enough structure to provide adequate services to needy 16 and 17 year olds. Instead of allowing an aggregate of 24 months for an agreement with 16 and 17 year olds, JFCY recommends that Bill 88 not amend subsection 29(5) but instead add subsection that specifies that the aggregate time limits do not apply to temporary care agreements made in respect of a child who is 16 or 17 years of age.” **JFCY Recommends** that Bill 88 at s 2. (4) would read:

2. (4) Section 29 of the Act is amended by adding the following subsection:

(5.1) Subsection (5) does not apply to a temporary care agreement made in respect of a child who is 16 or 17 years of age.

D. Conclusion

JFCY commends the efforts to extend child and family services supports to 16 and 17 year olds who are not currently involved with child welfare supports and services. This is a vulnerable population who need and deserve our care and support. Bill 88 enhances Ontario’s compliance with our international obligations to our children, and brings Ontario closer to standards in other parts of Canada. The *CFSA* is complex legislation, and making changes to provide for something so straightforward as the extension of temporary care agreements to 16 and 17 year

olds not currently receiving supports is a delicate exercise. While we support Bill 88, JFCY believes that the recommendations for amendments that we have described here are necessary to meaningfully and accurately implement the change envisioned by Bill 88. Without these recommendations we fear that the Bill will have held out an empty promise of service that proves to be impossible to access in reality. JFCY submits that these recommendations in fact just ensure that 16 and 17 year olds are able to access the supports and services that Bill 88 intends to provide.

List of Recommendations

1. Section 1 of the Bill should be amended to include section 1. (1) to read:
 1. **(1) Section 1 of the Act is amended by adding the following subsection:**
 - (1.1) this *Act* shall be interpreted in compliance with Canada's obligations under the *U.N. Convention on the Rights of the Child*.

2. Section 2. (1) of the Bill should be amended to read:
 2. **(1) Section 29 of the Act is amended by adding the following subsection:**

Same — child 16 or older

 - (1.1) Where a child who is 16 years of age or older voluntarily seeks to make an agreement, then the society having jurisdiction where the child resides shall make a written agreement for the society's care and custody of the child if the person who has custody of the child is temporarily unable to care adequately for the child.

3. Section 2 of the Bill should be amended to add subsection (7) to read:
 2. **(7) Section 29 of the Act is amended by adding the following subsection:**
 - (11) notwithstanding anything in this Act, children, 16 and 17 years old who have entered into a temporary care agreement, shall be entitled to extended care as provided for in section 71.1 and relevant regulations.

4. Section 2. of the Bill should be amended to add section 2.(6) to read:
 2. **(6) Section 29 of the Act is amended by adding the following subsection:**

Exception

 - (6.3) Subsections (6), (6.1), and (6.2) do not apply to a temporary care agreement made in respect of a child who is 16 or 17 years of age.

5. Section 2.(4) of the Bill should be amended to read:
 2. **(4) Section 29 of the Act is amended by adding the following subsection:**
 - (5.1) Subsection (5) does not apply to a temporary care agreement made in respect of a child who is 16 or 17 years of age.