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**Submission for the CRC General Comment on the Rights of Children in Street  
Situations**

**Justice for Children and Youth**

**April 12, 2016**

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**Introduction**

We seek to provide the Committee on the Rights of the Child (“the Committee”) with an overview of a rights-based model that addresses the legal needs of street children, and to provide recommendations to inform the General Comment on the rights of children in street situations.

In the experience of Justice for Children and Youth (JFCY), through our Street Youth Legal Services (SYLS) program, we have found that the legal needs of street children must be addressed in order to prevent children from entering street life and for any successful transition from street life to occur.

**About Justice for Children and Youth (JFCY)**

JFCY was founded to promote the rights and legal interests of children throughout Canada. For almost 40 years, JFCY has been active in countless matters advancing the rights of children and youth under Canadian legislation, the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and the United Nations *Convention on the Rights of the Child*<sup>1</sup> (“*UNCRC*”). Advancing the *UNCRC* is a foundational objective of our organization. In the last 20 years JFCY has appeared in approximately 19 cases before the Supreme Court of Canada (SCC).<sup>2</sup> In each case, JFCY has argued for the advancement of the *UNCRC* into Canadian domestic law.<sup>3</sup>

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<sup>1</sup> *Convention on the Rights of the Child*, 20 November 1989, 3 UNTS 1577, Can TS 1992/3 [*Convention*].

<sup>2</sup> *Kanhasamy v. Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61; *Moore v British Columbia (Education)*, 2012 SCC 61, 351 DLR (4<sup>th</sup>) 451; *Canada (Attorney General) v Downtown*

In 1999, responding to a need of our poorest citizens – homeless children and youth – JFCY founded Street Youth Legal Services (SYLS), a specialized legal outreach program.<sup>4</sup> SYLS provides legal information, advice and representation to street children.

SYLS is unique in that it reaches out to street children and youth where they spend their time – at service agencies, drop-ins, youth shelters, and health clinics. Through workshops and individual consultations SYLS establishes a trust relationship with marginalized youth who otherwise would have no reasonable access to legal services. The program is collaborative and community-based. It is designed to assist street children to understand their legal rights, resolve their legal difficulties, take control of social barriers, establish safe and secure community connections, move away from street life, and pursue meaningful participation in the broader community. SYLS has helped over 6000 street children and youth since its inception.

### **A. Street Children in Canada**

The lives and needs of street children in Canada must be considered and addressed within our social, economic and legal context. Most children who have the care of an adult can access an emergency shelter for families. Generally in Canada children under the age of

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*Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 254; *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44; *R v JZS*, 2010 SCC 1, [2010] 1 SCR 3; *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 SCR 181; *R v AM*, 2009 SCC 19, [2008] 1 SCR 569; *R v. SAC*, 2008 SCC 47, [2008] 2 SCR 675; *R v LTH*, 2008 SCC 47, [2008] 2 SCR 675; *R v DB*, 2008 SCC 25, [2008] 2 SCR 3; *R v BWP*; *R v BVN*, 2006 SCC 27, [2006] 1 SCR 941; *R v CD*; *R v CDK*, 2005 SCC 78, [2005] 3 SCR 668; *R v RC*, 2005 SCC 61, [2005] 3 SCR 99; *FN (Re)*, 2000 SCC 35, [2000] 1 SCR 880; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4<sup>th</sup>) 193; *Eaton v Brant County Board of Education*, [1997] 1 SCR 241, 142 DLR (4<sup>th</sup>) 385; *R v O'Connor*, [1995] 4 SCR 411, 130 DLR (4<sup>th</sup>) 235; and *A (LL) v B(A)*, [1995] 4 SCR 536, 130 DLR (4<sup>th</sup>) 422.

<sup>3</sup> Most recently, in *Kanthisamy v. Canada (Minister of Citizenship and Immigration)*, JFCY argued that the best interests of the child must be the primary consideration in the decision making process of a Humanitarian & Compassionate (“H&C”) application where a child is the primary applicant. The Supreme Court adopted JFCY’s arguments, finding that the best interest of the child were central and primary to H&C applications made by children.

<sup>4</sup> Estimates suggest that anywhere from 1,500 to 2,000 youth (ages 16 – 24) are homeless in Toronto on a given night.

16 are placed into the care of child protection agencies should they be living on the street or in situations of harm without adult protection. There are ubiquitous and persistent problems with child protection services, especially for aboriginal and racialized children and youth. In some parts of Canada, once 16 years old children can and do choose to leave the care of child protection, and often become homeless.<sup>5</sup> Street children in Canada are commonly referred as “street youth” or “homeless youth”, and are generally identified as young people ages 16 to 24.<sup>6</sup> Youth serving agencies, including homeless shelters as well as SYLS, will provide services to young people within this age range.

Although some of the people assisted by homeless youth-serving agencies in Canada are not “children” as defined by the *UNCRC*, the information provided in these submissions is highly relevant to street children throughout the world, regardless of age. Our work seeks to recognize the vulnerabilities, special needs and evolving capacities of children as they transition into adulthood beyond age 18. Even as one of the most economically secure nations in the world, Canada struggles with child and youth homelessness.<sup>7</sup> The lessons learned and areas for reform provide a case study that we hope will serve to advance the rights of street children everywhere.

## **B. Legal Needs of Street Children**

The legal needs of street children are varied and diverse. Our 2015 statistics show that the most common areas where street youth have legal issues are:

- Criminal – 28%
- Immigration – 10%

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<sup>5</sup> Raising the Roof: *Youth Homelessness in Canada: The Road to Solutions*, (2009) Toronto, Canada, at p. 19, online: Homeless Hub, <http://www.homelesshub.ca/sites/default/files/qbvwwaqz.pdf>

<sup>6</sup> For more information on “Street Youth” in Canada, including causes of youth homelessness in Canada, refer to: The Homeless Hub. (2015). <http://homelesshub.ca/>.

<sup>7</sup> In Canada, there are approximately 35,000 young people who are homeless at some point during the year. On any given evening, as many as 6000 youth are homeless, see Gaetz, S., *Coming of Age: Reimagining the Response to Youth Homelessness in Canada*, (2014) Toronto: The Canadian Homelessness Research Network Press at 7.

- Housing – 10%
- Family – 6%
- Street Tickets – 7%
- Employment – 4%<sup>8</sup>

These statistics represent the legal issues for which street children purposely sought the advice of a lawyer and do not include unreported legal issues.<sup>9</sup> For instance, research demonstrates that street children experience very high levels of victimization for which they do not seek assistance.<sup>10</sup>

The following descriptions of some of the legal problems that street children face exemplify the importance of legal assistance for street children. Legal assistance is necessary to facilitate a sustained transition out of street life. It must be accessible to street children and sensitive to their unique situations.

*“Street Tickets”*

“Street tickets” are formally in law Provincial Offences. These are fines issued by local authorities for offences (not crimes) commonly faced by homeless people, such as begging, loitering, or sleeping in public. Legislation to this effect exists in much of the world. 33% of street youth in Canada report being ticked for street offences.<sup>11</sup>

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<sup>8</sup> Justice for Children & Youth. (2015). *Street Youth Legal Services*. Retrieved from <http://jfcy.org/en/community-partnerships/street-youth-legal-services/>.

<sup>9</sup> For a further information on all legal issues street children face, please refer to the study conducted by Dr. Steven Gaetz of York University, Toronto for JFCY, Gaetz, S., “*Street Justice: Homeless Youth and Access to Justice* (2002), online: Homeless Hub, [http://www.homelesshub.ca/sites/default/files/Street\\_Justice.JFCY.02.pdf](http://www.homelesshub.ca/sites/default/files/Street_Justice.JFCY.02.pdf).

<sup>10</sup> Ibid, at pp 26, 35, 41, 44.

<sup>11</sup> Gaetz, Stephen., *Can I See Your ID? The Policing of Youth Homelessness in Toronto*. (2011). Justice for Children & Youth and Homeless Hub Press. ISBN 978-1-55014-563-2.

“Street ticket” legislation has garnered attention in Canada, with the expansion of these kinds of offences. The *Safe Streets Act (SSA)*<sup>12</sup> – an Ontario law passed in 1999, is designed to deter begging and other activities that homeless people may engage in to earn money.<sup>13</sup> The SSA prohibits car window cleaning and most begging by homeless people.<sup>14</sup> Police issue tickets that have an average cost of \$60 and maximum of \$500 for the first offence; some tickets can lead to jail time.<sup>15</sup> In essence, they dehumanize street children and criminalize poverty.

There is mounting evidence that street tickets create additional barriers to alleviating homelessness. Some people find themselves owing thousands of dollars in fines.<sup>16</sup> Most tickets go unpaid and crippling debts accrue.<sup>17</sup> These debts or potential jail time are additionally destabilising and can cause people to lose housing they may have found, or prevent them from leaving the street.<sup>18</sup>

Street tickets exacerbate homelessness. They are also an attack on street children’s access to public spaces – especially offences like loitering that speak to the very nature of

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<sup>12</sup> JFCY led a challenge to the SSA wherein we argued the law was unconstitutional. On behalf of street involved children youth and adults, lawyers argued that the law violated the rights to equality under the law because of the law’s clear intent to limit public interactions of street youth but not the street interactions of other people. Further it was argued that the law violated people’s right to life, liberty and security of the person, the right to the presumption of innocence is cruel and unusual treatment, and is in effect criminal law. After years of litigation the challenge was dismissed at the Court of Appeal. *R. v. Banks*, 2007 ONCA 19 (CanLII), <<http://canlii.ca/t/1q8h0>>, retrieved on 2016-04-04

<sup>13</sup> Refer to *R. v. Banks*, 2007 ONCA 19 (CanLII) *ibid*; also: Ontario, Legislative Assembly, Official Report of Debates (Hansard), No. 9 (November 2 1999) at 284. Available at: [http://www.ontla.on.ca/house-proceedings/transcripts/files\\_html/1999-11-02\\_L008.htm#P63\\_14047](http://www.ontla.on.ca/house-proceedings/transcripts/files_html/1999-11-02_L008.htm#P63_14047)

<sup>14</sup> Safe Streets Act, S.O. 1999, c 8, s. 2(2), 3(2): “Captive audience” and “aggressive” begging are prohibited. Captive audience includes people waiting for public transit, those entering or exiting cars, those using bank machines etc. Aggressive is defined to include being intoxicated, asking more than once,

<sup>15</sup> *Ibid*, s. 5(1); *see also* Homeless Hub, “*Homeless People Cannot Pay SSA Fines*”, (2015), online: <http://homelesshub.ca/safe-streets-act>

<sup>16</sup> O’Grady, B., Gaetz, S., Buccieri, K., “Tickets... and More Tickets: A Case Study of the Enforcement of the Ontario Safe Streets Act” (2013) Canadian Public Policy, Vol. 39, No. 4, at 552. *See also*, Monsebraaten, L., “Legal Clinic Helps Homeless Fight Unplayable Nuisance Tickets”, *The Toronto Star*, (9 March 2015), online: <http://www.thestar.com/news/gta/2015/03/09/toronto-legal-clinic-helps-homeless-fight-unpayable-nuisance-tickets.html>

<sup>17</sup> *Ibid* at 552.

<sup>18</sup> For example, debts are kept on record and may prohibit someone from getting a driver’s licence or they can be referred to a collection agency. If that individual is given jail time, the social assistance they may use to pay their monthly rent can be cut off. Once released, they find themselves again homeless; Homeless Hub, *supra* note 15; and O’Grady, B., *supra* note 16.

homelessness.<sup>19</sup> Addressing the criminalization of homelessness is an important step in supporting people living in deepest poverty.<sup>20</sup>

### *Street Children and Housing Legal Issues*

Research shows that having an apartment or room is no guarantee of stable housing.<sup>21</sup> Street children who at some point obtain housing face legal issues, such as evictions, illegal fees, illegal entry by a landlord, or a landlord failing to maintain the property.<sup>22</sup> These issues put housing at risk.

Street children also face discrimination when applying for housing based on age, race, or receipt of social assistance,<sup>23</sup> among other grounds.

These legal issues result in decreased access to housing, and increased instability with respect to housing that street children may establish. Legal issues in housing have a direct impact on children's ability to successfully and sustainably exit street life.

### *Street Children and Employment Rights*

Street children are either employed in formal or informal markets. In either market, street children face employment-related legal issues, and are additionally vulnerable because of

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<sup>19</sup> Gaetz, S., *supra* note 11.

<sup>20</sup> Specialized legal programs assist homeless and marginalized individuals with all forms of street tickets. Representatives will gain access to ticket records with local authorities, negotiate on behalf of the individual to eliminate or reduce fines, and represent them in Court. Programs include SYLS, as well as the *Fair Change Community Services* clinic in Toronto, Canada. For further information see: *Fair Change Community Services* at <https://fairchangeccs.wordpress.com/>

<sup>21</sup> See Gaetz, S., *supra* note 9 at 22. Dr. Gaetz found that 64.2% of homeless youth had at point had an apartment.

<sup>22</sup> *Ibid*, p. 23. In Ontario, Canada, housing is regulated by the Residential Tenancies Act (RTA) and enforced via the Landlord and Tenant Board (LTB). The RTA prohibits a landlord from entering a unit without a minimum of 24 hours' notice for legislated reasons, only, except in the case of emergencies. The RTA also sets the rules for maintenance and care of a unit – for instance providing heat and water, cleaning mould or other health hazards - as well as rent collection and increases. Residential Tenancies Act, S.O. 2006, c. 17, s. 25, s. 30, ss.105-109.

<sup>23</sup> Social Assistance is a ground for discrimination when applying for housing; see Human Rights Code, R.S.O. 1990, c. H.19, s. 2(1).

their age.<sup>24</sup> The most common issue is non-payment of wages. A staggering 71% of street children stated that they had problems getting paid for their labour at least once.<sup>25</sup> Street children also deal with sexual harassment and racism on the job, as well as dismissal without cause.<sup>26</sup>

Stable and paid employment has a clear link to both prevention and alleviation of homelessness. Street children are unable to resolve employment law issues without legal assistance, and the consequences negatively impact the stability and equity of employment in profound ways.

### *Street Children and Immigration Issues*

A recent study conducted in Toronto revealed that 22.3% of homeless youth were born outside of Canada.<sup>27</sup> Some children arrived in Canada as unaccompanied minors, others experienced family breakdown after arriving; most have precarious immigration status.

Street children with precarious immigration status fear accessing the institutions that could assist them in improving their situation. Yet, their precarious status prevents their street situation from improving. Without legal assistance street children will not secure a favourable immigration outcome. The consequences of limited access to legal help in immigration matters results in on-going street life.

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<sup>24</sup> Gaetz, Stephen. (2002). *Street Justice: Homeless Youth and Access to Justice*, at 29. Justice for Children & Youth. Retrieved from [http://www.homelesshub.ca/sites/default/files/Street\\_Justice.JFCY.02.pdf](http://www.homelesshub.ca/sites/default/files/Street_Justice.JFCY.02.pdf).

Approximately 513.1% of street children reported experiencing employment legal issues, at 32.

<sup>25</sup> Gaetz, Stephen. (2002). *Street Justice: Homeless Youth and Access to Justice*. at 33; Justice for Children & Youth. Available at [http://www.homelesshub.ca/sites/default/files/Street\\_Justice.JFCY.02.pdf](http://www.homelesshub.ca/sites/default/files/Street_Justice.JFCY.02.pdf).

<sup>26</sup> Ibid, at 33.

<sup>27</sup> McKenzie, K., Goodman, D., *Hidden in Our Midst: Homeless Newcomer Youth in Toronto*, Centre for Addiction and Mental Health (CAMH), (2014) Children Aid Society of Toronto, Toronto. Available at: <http://www.homelesshub.ca/resource/hidden-our-midst-homeless-newcomer-youth-toronto#sthash.wYfCtIcB.dpuf>

### **C. Conclusion**

Each of the above examples demonstrates the importance of appropriate legal help for street children. Street children and youth require legal assistance to: fight street tickets and fines; defend against unscrupulous landlords who would take advantage of children's vulnerabilities or discriminate against them; enforce their rights and ameliorate marginalization in employment; protect and advance the legal interests of undocumented street children, and; help street children to access supports and mechanisms for leaving street life. In addition, strong legislative frameworks designed to identify and protect the rights of street children are also required.

### **D. Recommendations**

JFCY recommends that the General Comment:

- Encourage states to develop strong legislative frameworks that will define and enforce the legal rights and dignity of street children – such as detailed housing, employment, and immigration legislation.
- Encourage states to provide funding and resource support to legal aid programs that are designed specifically with street children in mind. Legal help must be informed and sensitive to the unique situation of street children in order to be effective.