

Justice for Children and Youth

Canadian Foundation for Children
Youth and the Law

NEWSLETTER

April 2003

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THOUGHTS FROM THE EXECUTIVE DIRECTOR

Martha Mackinnon

Justice for Children and Youth has been busy with test case work, in an effort to have a broader impact with our limited legal resources. So, our constitutional challenge to section 43 of the Criminal Code (corporal punishment defence) will be argued before the Supreme Court of Canada on June 6, 2003, Marc Hall, the young man who wanted to take his same-sex date to the prom won an injunction allowing him to go to the prom with his date, but the case is going to trial to consider the rights of other young people in the same position as Marc. Justice for Children and Youth intervened in the injunction application and many of our arguments appeared in the decision. We will also try to make sure that arguments about youth generally are considered in the trial.

In December 2002, we intervened in a case between the Ottawa-Carlton District School Board and an eleven-year-old exceptional student, Zachary Bonnah.

The case concerned an "administrative transfer" of Zachary from his placement determined by the IPRC special education process to a different school allegedly for safety reasons. For the first time the Court of Appeal considered the interrelationship between portions of the *Education Act* concerning safe schools and the special education provisions in the same Act. The decision of the Court of Appeal is helpful in the Court makes it clear that safe school provisions cannot be used to change an exceptional student's placement, it was particularly rewarding for Justice for Children and Youth that, both orally and in the written decision, the Court thanked us for our helpful submissions. I am proud of courts' recognition of our expertise.

As well as on-going case work, the clinic has been busy on the administrative side. In the first week of April we moved down one floor in our building to Suite 310. The premises are larger, with a more spacious area for Board meetings and two small rooms for client consultations. However, four of us are sharing offices as a result of the unusual configuration of the premises and we are all learning to work a little differently.

On the staffing front, Annie Lacroix has returned from her parental leave, but Andrea Monahan is leaving to work more directly with young people in mediation and dispute resolution. Naomi Johnson finished her contract as a community development lawyer with Justice for Children and Youth and is currently working in a United Nations refugee camp for children in Ethiopia. Emily Chan is now doing the community development work and began her work with JFCY by participating every day for two weeks in Regent Park's Pathways to Education program.cont'd on next page

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Emily talked with these young people about the *Youth Criminal Justice Act* which came into force on April 1, 2003. Jennifer Marston is an articling student at Blakes who is seconded to JFCY for one rotation. She was immediately involved in a Supreme Court of Canada case. Waliyya Payne has begun an administrative assistant placement with us as part of the Learn to Earn program operated by Rosalie Hall of the Toronto District School Board. Gloria Dang is a TDSB student who will be with us until June. Another articling student arrives from Blakes next month as Reagan Murdock, Jonathan xxx, Philip Tyborski, and John Kerenyi end their social work, law student and education placements with us. It is clear that we could not accomplish half of what we do, were it not for the volunteers and placement students. We are very grateful! So, even if spring never comes, the clinic is busy.

Feature Article

Challenges Facing Bonded Children and Youth in India, and the Role of South Asian Coalition on Child servitude (SACCS) in Enabling Change and Empowering Child Labourers

-by Randhir Batsa, visiting field worker at JFCY from the *South Asian Coalition on Child Servitude*, India.

Bonded Children and Child Labour in India:

Slavery cannot be dismissed as an isolated problem in remote villages, it is global issue, which profoundly yet quietly affects our daily lives. Many goods produced with slave labour are exported directly to North America and Europe, and consumers often purchase these slave-made products while unaware of their tainted origins. In addition, although production of certain consumer good may not explicitly use slave labour, they may still use slave-made components.

The UNDP Human Development Index measures a country's achievements in terms of life expectancy, educational attainment and adjusted real income and ranked 115 out of 162 countries. National Statistics disguise massive social and regional inequalities; It is estimated that 36% of the population (which reached 1 billion in 2000) lives below poverty line, with poor access to basic services. The reduction of public expenditure has been felt acutely in social sectors such as education and health care. Education suffers from massive disparities between rural and urban communities and between males and females. Cast groups such as 'Dalits' and 'Tribal groups' continue to suffer from widespread discrimination in all areas of life. Rural schools are poor quality and under resources. Gender inequalities are particularly pronounced in many northern Indian states. Many children, particularly denied education and it is estimated that some 60 to 115 million, children in India work as child labour. The official figure of child labourers is 13 million. But the actual number is much higher. According to a 1996 report (quoting ILO and UNICEF as sources), the number of child labourers in India can be anywhere between 14-100 million children.

India has the largest number of working children (in hazardous conditions) in the world. Whether they are sweating in the heat of stone quarries, working in the field's sixteen hours a day, picking rags in city streets, or hidden away as domestic servants, these children endure miserable and difficult lives. They earn little and are abused much. They struggle to make enough to eat and perhaps to help feed their families as well. They do not go to school; more than half of them will never learn the barest skills of literacy. Many of them have been working since the age of five or six, and by the time they reach adulthood they may be irrevocably sick or deformed – they will certainly be exhausted, old men and women by the age of forty, likely to be dead by fifty.

"Bonded child labour" refers to the phenomenon of children working in conditions of servitude in order to pay off a debt. The debt that binds them to their employer is incurred not by the children themselves, but by their relatives or guardians-usually by a parent. In India, these debts tend to be relatively modest, ranging on average from 500 rupees to 7,500 rupees, (US\$100 to \$150) depending on the industry and the age and skill of the child. The creditors-cum-employers or sometime by the 'middleman' offers these "loans" to destitute parents in an effort to secure the labour of a child, which is always cheap, but even cheaper under a situation of bondage. The parents, for their part, accept the loans. Bondage is pay for the costs of an illness, perhaps to provide a dowry to a marrying child, or perhaps-as is often the case-to help out put food on the table. Some Children become bonded labourers because they are given to the loom owners on the false promise of an education or good wages (to be sent back home to help the family).

Others are simply sold to loom owners because their families cannot afford to feed them. Even more children are simply kidnapped and sold into slavery at the age of 6 to 10 years.

The children who are sold to these bond masters work long hours over many years in an attempt to pay off these debts. Due to the astronomically high rates of interest charged and the abysmally low wages paid, they are usually unsuccessful. As they reach maturity, the employer in favour of a newly indebted and younger child may release some of them. Many others will pass the debt on, intact or even higher, to a younger sibling, back to a parent, or on to their own children.

The extreme poverty of the harijans or untouchables (the lowest group in the traditional caste system) and the adivasis (the tribal or indigenous people) make them the most vulnerable groups for exploitation.

Available statistics suggest that more boys than girls work. It should be borne in mind, however, that the number of working girls is often underestimated by statistical surveys, as they usually do not take into account full-time housework performed by many children, the vast majority of whom are girls, in order to enable their parents to go to work. Girls, moreover, tend to work longer hours, on an average, than do boys. This is especially true for the many girls employed as **domestic workers**, a type of employment in which hours of work are typically extremely long.

Work conditions are dangerous to the health of the child. In the **Beedi industry** (domestic cigarette- raw tobacco wrapped in a special kind of leaf), the long hours spent hunched over the basket of tobacco causes growth deformities, and the constant proximity to tobacco dust causes and exacerbates lung diseases; there is a very high rate of tuberculosis in communities dedicated to the manufacture of beedi. Most children work many years for their agents, for whom the agents and particularly the owners of the beedi company, profit handsomely. It is, simply, a serve form of economic exploitation.

In **carpet weaving** the occupational disease are similar; the children sit in a cramped space all day long, inhaling wool fibres and dust. As a result, the carpet weavers are prone to emphysema and tuberculosis; they also suffer frequent cuts to their hands and fingers, which may be cured by cauterising them with burning sulphur. Silk workers face similar long and short-term hazards.

The **silver workers** suffer frequent burns on their hands and arms, the **leather workers** exposed to toxic chemicals long banned in developed countries, and the **gemstone polishers** are subject to both cuts and toxic contamination. All of these workers, given their cramped and unsanitary work places, suffer a high risk of contracting tuberculosis and other disease of poverty.

Three of industries mentioned - carpet weaving, beedi rolling, silver workers, as "hazardous" under India's Child Labour (Prohibition and Regulation) Act of 1986. But the government itself violating the Central Government's Handloom and Handicrafts Export Corporation runs approximately two hundred "training centres" for child labours in the carpet industry.

Within these groups, children are probably the most exploited. One justification for child labour in the carpet industry is the predominant "myth of nimble fingers", which claims that the small fingers of children are more productive than those of adults. (Nevertheless, the quality carpets that can be sold at the highest prices are often those made by adults.)

Today, the carpet industry in India is mainly concentrated in the north-eastern state of Uttar Pradesh, which shares its border with Nepal. There are an estimated 70,000 looms in Uttar Pradesh. 95% of these operations are not registered under the Factory Act or the Shops and Establishment Act, because they are comprised of one man who owns only two looms run by a crew of no more than a few young boys. In addition, many of these looms are located in small villages or in remote areas making them difficult to monitor.

In conclusion it can be said that even though the practice of child debt servitude has been illegal in India since 1933, when the Children (Pledging of Labour) Act, was enacted under British rule. Since independence, a plethora of additional protective legislation has been put in place. There are distinct laws governing child labour in Factories, in Commercial Establishments, on Plantations, and in Apprenticeships. There are laws governing the use of migrant labour and contract labour. A relatively recent law the Child Labour (Prohibition and Regulation) Act of 1986 designates a child as a person who has not completed their fourteenth year of age. It purports to regulate the hours and conditions of some child workers and to prohibit the use of child labour, in certain enumerated hazardous industries. (There is no blanket prohibition on the use of child labour, nor any universal minimum age set for child workers.) Most important of all, for children in servitude, is the Bonded Labour System (Abolition) Act, 1976, which strictly outlaws all forms of debt bondage and forced labour. This legal safeguards mean little and coverage under the act should be expanded to include agriculture and informal sectors. However what is needed is strong political will, legislation with more teeth and universalization of primary education

Role of South Asian coalition on child servitude:

Menace of child labour and bonded labour has been widespread and deep-rooted all across South Asia. The society has accepted it as a part of their lives throughout generations. However, South Asian Coalition on Child Servitude /Bachpan Bachao Andolan (Save Childhood Movement) was the first civil society initiative in this regard to question and fight against this evil. It deserves the credit not being the first organisation in India on this issue but the first Regional People's Movement in the world.

SACCS/BBA today symbolizes the movement against child servitude. As an initiator of rescuing slave children (direct action) from the remotest villages in India on one hand and the organizer / leader of Global March Against Child Labour on the other, SACCS/BBA has a legacy of a crusade of 20 years.

Founded as a group of few individuals, SACCS/BBA has emerged as an organization of thousands of individual supporters under the banner of Bachpan Bachao Andolan as well as network of over 700 NGOs, Trade Unions, Human Rights Organizations, Teacher's Union, Child Rights groups etc. dedicated towards the total elimination of child labour and proud in liberating over 55,000 children from slavery, which paved the way for new lives through Education, Training and Rehabilitation.

SACCS/BBA is known for its innovative initiative and multi-faceted intervention including secret raids and rescue operations to liberate slave children, making them leaders and liberators in Mukti Ashram, Bal Ashram and Girl's Collective - the unique rehabilitation centres.

SACCS/BBA has also been spearheading campaigns for **free, compulsory and meaningful education**, sensitization of parents, communities and school children, coalition building with Trade Unions, Teacher's Organizations, Religious Groups, Political Parties and Employers, consumer action like Rugmark Foundation, Ethical Trade Initiative like Fair Play Campaign and several others.

Global Initiatives:

Amongst our several Global Initiatives, particularly those, which deserve mention, are the RUGMARK, Global March Against Child Labour, Global Campaign on Education.

RUGMARK is the first ever-social labelling system, which ensure the production of child labour free carpet in India.

Global March against Child Labour is the first ever-civil society initiatives in the world, which has a presence more than 144 countries across the globe. The Global March against Child Labour has been successful in the adoption of convention 182 on Worst Forms of Child Labour at the ILO. Today, the Global March Against Child Labour International Secretariat is based in New Delhi is involved in the follow up action with regard to 182 convention.

The Global Campaign on Education (GCE) in which the chief actors are the Global March against child labour, Education International, OXFAM International and Action Aid came into being as a platform of development NGOs and Teacher's Unions in a record 180 countries to mount pressure on the Governments to ensure education for all which was promised in 1990 in Jomtien to be achieved by 2000. This promise has remained a hollow slogan. Recently in Dakar the dead line was extended to 2015.

The GCE firmly believes that 'Education for All' is achievable. In all, 125 million children world-wide don't enjoy the fruits of education. Moreover, 1880 million adults are illiterate. GCE holds that the need of the hour is strong political will, diametric changes in World Bank, policies, 6% allocation of GNP to education to ensure free compulsory and quality education for all children.

- To end the worst forms of child labour: an appeal to the civil society of Canada:
- Become personally involved in helping children you see being exploited
- Volunteer your time for organizations working to protect children
- Learn more about the worst forms of child labour and the laws against them
- Discuss the problem openly within your community
- Bring other concerned people together to form a united group taking specific actions to fight against the problem
- Organize public demonstrations and programs to highlight the urgency of the problem
- Tell businesses you will buy nothing if they , or their manufacturing agent, exploits children
- Raise funds to support the rehabilitation, education and reintegration programs for children freed from the worst forms of child labour
- Ask your Government representatives to take immediate action to end the worst forms of child labour and support the organization working to eliminate the child labour in different developing countries
- Pledge to continue your efforts until every child enjoys their rights to a childhood.

TEST CASE UPDATES

Hawthorne v. Minister of Immigration and Citizenship- Cheryl Milne & Naomi Johnson were before the Federal Court of Appeal in a case involving the rights of children in a decision to deport a parent. In the case of the *Minister of Citizenship and Immigration v. Hawthorne*, the government was arguing that the immigration officer need only look at whether the deportation of the child's mother would cause the child undue hardship. As interveners in the case, we argued that the officer was required to look at the "best interests" of the child as required by the *Baker* case decided by the Supreme Court of Canada and by the United Nations *Convention on the Rights of the Child*. The Federal Court

Zachary Bonnah v. Ottawa Carleton District School Board-Martha Mackinnon & Lee Ann Chapman

The issue concerned the right of a school board to use an "administrative transfer" to circumvent the special education provisions of the Education Act to change the placement of a special needs student. The Ontario Court of Appeal heard the case, and our intervention on December 6, 2002. We received the decision of the Court on April 8, 2003. While the decision is not "perfect" from our point of view, it does make it clear that there is a comprehensive regime under the *Education Act* for special needs student, which principals and school boards cannot circumvent.

Safe Streets Act Challenge-Mary Birdsell. The issue was whether the provisions of the so-called squeegee and pan-handling act violated the provisions of the Charter by discriminating against vulnerable young and poor people. We are awaiting the decision of the Superior Court of Justice.

Section 43 Challenge-Cheryl Milne & Paul Schabas. The Foundation has been granted leave by the Supreme Court of Canada to appeal the decision of the Ontario Court of Appeal, dismissing our attempt to have section 43 of the Criminal Code declared unconstitutional. The Supreme Court of Canada will hear our appeal on June 6, 2003. We are being supported in our efforts, once again, by a grant from the Court Challenges Program and the *pro bono* services of Paul Schabas of Blake, Cassels & Graydon LLP. Good Luck to Cheryl and Paul!

Observations of a Co-op Student

I am a co-op student at Justice for Children and Youth. I've been here since September and I will be here until the end of June. When I first started my placement here, I didn't know anyone. But as time passed, I got a chance to get to know the people at the office better. I have discovered that they are all nice, kind, and caring people.

Here, at Justice for Children and Youth, I have been given the position of the Administrative Assistant and recently, the "official" court processor. I answer the phones and do a lot of photocopying, which I don't mind at all. I also try to help out with any thing that I can based on my knowledge.

One of the most interesting aspects of this placement is the Youth Advisory Committee. I enjoy going to the meetings and hearing the different opinions and ideas that people have to share. I think that the Youth Advisory Committee is a great group of people who have a lot of creative thoughts that they share to help come up with the mission statement and other projects that the group can do.

I am really glad that I was given a placement like this. I think that I will be able to learn a lot here, just like I already have. By being here, I get a better sense of what the real world is like. I have realized that the world is not a perfect place like some people may think or imagine. But its places like Justice for Children and Youth that make the world a better place. It just goes to show that when you're in need of help, there is always someone you can talk to or go to for help or advice. I can already tell that by the end of my placement term, I won't want to leave.

I'd like to thank everyone at Justice for Children and Youth for giving me such a great opportunity to learn and experience. I hope that everyone had a happy and safe holiday!

Gloria Dang

**Series on
THE HISTORIC STATUS OF CHILDREN**

Victorian England.

Many children worked 16 hour days under atrocious conditions. Ineffective parliamentary acts to regulate the work of workhouse children in factories and cotton mills to 12 hours per day had been passed as early as 1802 and 1819. After radical agitation, a royal commission established by the Whig government recommended in 1833 that children aged 11-18 be permitted to work a maximum of twelve hours per day; children 9-11 were allowed to work 8 hour days; and children under 9 were no longer permitted to work at all (children as young as 3 had been put to work previously). This act applied only to the textile industry, where children were put to work at the age of 5, and not to a host of other industries and occupations. Iron and coal mines (where children, again, both boys and girls, began work at age 5, and generally died before they were 25), gas works, shipyards, construction, match factories, nail factories, and the business of chimney sweeping, where the exploitation of child labour was more extensive. Where applicable, child labour laws were to be enforced in all of England by a total of four inspectors.

Announcements

**MANY MANY THANKS,
AND A FOND FAREWELL !**

Andrea Monahan is leaving after 3 years of working on special projects etc...she will be greatly missed to say the least!!

Farewell, Thanks and Good Luck to:
Articling Student from Blakes, Cassels & Graydon: **Jennifer Marston &**
Ryerson co-op social work student: **Reegan Murdoch**

CONGRATULATIONS!!

Mary Birdsell (JFCY staff lawyer on leave) & **Trevor Farrow** on the birth of their daughter **Morley**, in Edmonton on December 10, 2002.

Thanks to our Supporters

COURT CHALLENGES PROGRAM

(Section 43 Challenge)

LAW FOUNDATION OF ONTARIO

(Street Youth Legal Services)

DEPARTMENT OF JUSTICE

(Public Legal Education; Youth Criminal Justice Act)

CITY OF TORONTO (S.C.P.I.) "SKIPPY"

(Needs Assessment, Homeless Youth)

NATIONAL CRIME PREVENTION CENTRE

(Diversionary Peer Mediation)

PAUL SCHABAS, BLAKE CASSELS & GRAYDON

(Section 43 Challenge)

Thanks to our Volunteers

**We wish to thank our many dedicated
volunteers for their various outstanding
contributions.**

A special thanks to:

FRED ZEMANS

RUSSEL VAUGHAN

**for all their years of service as board members and members
of the executive of Justice for Children and Youth!!!**

MEMBERSHIP APPLICATION

YES, I am interested in becoming involved with Justice for Children and Youth.

_____ I would like to become a member of Justice for Children and Youth.

_____ I would like to renew my membership.

Please enroll me as:

- | | |
|---|--|
| <input type="checkbox"/> an individual member, \$20.00 | <input type="checkbox"/> an organization, \$50.00 |
| <input type="checkbox"/> a sustaining member, \$100.00 (Lifetime) | <input type="checkbox"/> a youth member, under 18, free _____
_____ (age) |

NAME/ORGANIZATION: _____

ADDRESS: _____

TELEPHONE (B): _____
(Area Code)

TELEPHONE (H): _____
(Area Code)

I am interested in serving on the following Committee:

- | | |
|--|--|
| <input type="checkbox"/> Policy Committee | <input type="checkbox"/> Youth Advisory Committee |
| <input type="checkbox"/> Fundraising Committee | <input type="checkbox"/> Community Development Committee |

Please find enclosed my membership fee of \$ _____ and a donation of \$ _____
(a charitable donation receipt will be issued). Thank you for your contribution.

JUSTICE FOR CHILDREN AND YOUTH
Canadian Foundation for Children, Youth and the Law
405-720 Spadina Avenue
Toronto, Ontario
M5S 2T9
Tel: (416) 920-1633
Fax: (416) 920-5855