

Justice for Children and Youth

Canadian Foundation for Children
Youth and the Law

NEWSLETTER

May 2002

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THOUGHTS FROM THE EXECUTIVE DIRECTOR

Some days it feels as though I have been Executive Director of Justice for Children and Youth for about two minutes! There is so much system-wide change and so much to learn. Other days, it seems as though I have been ED for years – so much has happened and so much been accomplished! Staff changes – Mary Birdsell on a leave in Edmonton, Annie Lacroix on maternity leave, additional funding for SYLS, additional funding to co-ordinate peer mediation programs – have led to endless hiring processes. Though time-consuming and occasionally difficult, the results have been exciting and heart-warming. The quality and large number of people interested in working for children and youth is wonderful.

Our test case work continues to expand – currently we are litigating more test cases than we have lawyers and we all feel excited and challenged by our legal work.

Although the time spent on administration grows, we have been rewarded by an expanded capacity to provide more public legal education materials, to deliver more services to street-involved youth, to encourage programs that hold young people accountable for misconduct outside of a court process. We are grateful for the opportunities to broaden our funding base and to expand the service we can provide. For young people outside of the Greater Toronto Area, we now have a toll-free number 1-866-999-JFCY.

It has been a full, but dizzying time. Dizzying and exhilarating!

Martha Mackinnon

MESSAGE FROM THE PRESIDENT

Over the past year the Board of Directors has developed policies and practices to improve the efficiency of the clinic. Last spring we implemented a new process for hiring the Executive Director. We determined that we should choose from the largest pool possible, and that internal candidates would not have an advantage in the process. At the end of our search, we were pleased to hire Martha Mackinnon. We also worked with the clinic staff, developing and implementing policies and protocols for the purposes of file maintenance. When the Quality Assurance Program lawyer from Legal Aid Ontario reviewed the Clinic files in December 2001, we received a very favourable report. The report commented on the substantial improvements to the procedures at JFCY since the previous reviews in 1998. As a result, QAP has now stated that they have no additional recommendations.

I am also gratified to announce that this year the clinic has obtained a number of grants for a wide variety of projects, from one year funding for our SYLS lawyer from the Law Foundation of Ontario, to a diversionary peer mediation program funded by the National Crime Prevention Centre. The JFCY Board was very successful in its fundraising concert in November. With the generous contributions of *The Thin Skulls*, and *Frankie Foo*, we boogied our way to approximately \$1600 in donations. I want to thank all those who contributed their time to the benefit, as well as all our other endeavours, and encourage all members to participate to whatever extent is possible, in the year ahead.

Paul Wollaston

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SPECIAL FEATURE

Our gratitude to Michele Landsberg and the Toronto Star for allowing us to reprint this article entitled *VIOLENCE OF A SADOMASOCHIST MAY BEGIN AT HOME*, which appeared in the Toronto Star newspaper, Sunday, March 31, 2002. Please note the reference to the sec. 43 challenge.

Michele Landsberg

THE MAN IS a whining, narcissistic, megalomaniac creep. He revels in being "Canada's most hated man" (in his own words) and at the same time brags that he's suffering in order to make Canada a better place. What fun for a certified sadomasochist: Every time John Robin Sharpe drags his wormy little fantasy world of violent child rape and floggings back into the spotlight, he not only gets to torment the public but he also seems to relish another grovelling round of public humiliation.

Maybe this time we should turn the tables. Instead of falling into the predictable minuet of media commentary – free speech, artistic merit, privacy rights, blah blah – let's connect the dots to some other recent events that have seized the headlines. We might actually wring some public usefulness from this thoroughly repulsive story.

Last week, in a decision of startling importance, a 16-year-old girl in Abbotsford, B.C., was found guilty of criminal harassment for death threats against classmate Dawn Marie Wesley, who committed suicide.

Every parent who had ever stood by helplessly while her child was bullied at school must have experienced the same chill shock of recognition: Of course. Bullying is assault. Assault is a crime. Threats, taunts, harassment and physical aggression against an adult are crimes. Why have we always been taught to shrug off such beastliness against vulnerable schoolchildren? We didn't shake ourselves out of our numbness until young people actually started to die.

While parents and school authorities wrestle with how best to stop bullying, I can't help but think of two other court cases that hint at how bullying begins in the first place.

One cause of bullying, said a study summarized in the American Medical Association News Update several years ago, is spanking. Researchers followed more than 800 mothers in a longitudinal study. They found that children who were spanked, even once a week, even in otherwise loving and emotionally warm families, and despite any other social or economic factors, all showed an increase in anti-social behaviour, tendencies to cheat and lie, bullying, cruelty to others and disobedience at school.

That study doesn't stand alone. In a powerful recent book, *Something To Cry About, An Argument Against Corporal Punishment of Children in Canada*, author Dr. Susan Turner cites dozens of studies on the correlation between physical punishment of children and their levels of aggression in adulthood. The studies are virtually unanimous. Corporal punishment is a significant risk factor for bullying,

alienation from family, poor school performance and adult violence. In January of this year, the Ontario Court of Appeal upheld the right of teachers and parents to use "reasonable force" to "correct" their children's behaviour, in the words of Section 43 of the Criminal Code. Section 43 provides a defence for adults accused of assaulting children. Judges Stephen Goudge, Marvin Catzman and David Doherty all agreed that Section 43 strikes "a fair balance" between children's right to be protected and adults' rights to use force on children without fearing prosecution.

I'm astonished. As a society, we've now recognized that violence against schoolchildren is assault. It took us the better part of a century to establish that simple fact. It took decades and decades to show that a man has no right to hit his wife. We now call it assault, though it was once called "correction." And after all this, learned judges soberly sit on the bench and decree that violence against small, defenceless children – the deliberate infliction of pain by trusted adults – is "reasonable" and not an assault.

As Dr. Turner methodically and crisply establishes in her book, not a single rationale for hitting children can withstand clear, logical analysis, let alone moral, ethical or utilitarian considerations. Nor, in countries like Sweden and Italy where hitting children has become illegal, has there been an outbreak of arrests of parents who swatted their offspring. (That seems to be the guilty panic of the majority of Canadian parents, who constantly support Section 43 lest cops break down their doors and arrest them for spanking. As if.)

Instead, wherever corporal punishment has been outlawed, whole cultures are slowly changing to recognize the terrible, widespread harm of physical violence against children.

And the harm is reversible. A University of Minnesota study of 1,000 parents showed that children's levels of aggression and violence drop dramatically when their parents stop hitting and learn to discipline their children with attention, praise, love and clear standards of behaviour.

Two more things. Whence comes John Robin Sharpe's obsession with punishment, beatings, sexual violence against small children and – to cite the subject of one of his stories – floggings of young boys by their fathers? We don't know much about Sharpe's early life, but psychologists have shown that when parents spank their young children on the buttocks, while proclaiming their love, the child often confuses the pain of the blow with the sexual stimulation of the genital region. When pain and erotic excitement are combined, a little sadomasochist may be in the making.

And then there's Randal Dooley. Dead at the age of 7, beaten and tortured in ways too gruesomely familiar to bear repeating. His father and stepmother have been on trial for his death for three months now.

People who believe in inflicting physical pain and humiliation on small children, to change or improve their conduct or character, are four times more likely than others to become child abusers. It stands to reason. If you think hitting is effective, and you hit, and the child still cries or misbehaves, you'll escalate the violence. You'll hit more and harder. You'll reach for the stick or the bungee cord.

How long will it take us to see that physical punishment of children is assault, that regular assault maims the soul, and that a culture that approves of hurting children in the name of love should not be shocked when it produces a John Robin Sharpe, or creates the bullies who drove Dawn Marie to her death?

Michele Landsberg's column usually appears in The Star Saturday and Sunday. Her e-mail address is mlandsb@thestar.ca

Annual General Meeting

The annual general meeting of JFCY was held on November 22, 2001. We congratulate the Board Members, student volunteers, as well as staff, who helped make it a great success .

Our current president, Paul Wollaston thanked the past Board Members for their hard work. He also presented an overview of the achievements of the past year. JFCY executive director Martha Mackinnon, thanked the volunteers for all their contributions and enthusiasm, she then presented them with certificates of achievement.

At the meeting, we had the pleasure of hearing from the Honourable Tony Ianno, who praised the Foundation for its continuing efforts on behalf of children's right. He made specific reference to the sec. 43 challenge, and his particular interest in the issue.

We also heard from Jaene Castrillon, from Save the Children Canada, who discussed their continuing efforts on behalf of street youth, and the difficulty of finding adequate funding for their work. Jaene, and Adele, a youth worker from Maggies, discussed the possible impact of the Ontario legislation to deal with young street-workers (Bill 86). They both voiced their concerns that the proposed Act appears to threaten basic human rights of street youth, rather than offering positive alternatives. Many of our members were so interested in the discussion, that they continued to engage Jaene and Adele long after their presentation officially ended.

NEXT ANNUAL GENERAL MEETING...OCTOBER 9, 2002

COMMENTARY FOR CBC METRO MORNING ON SEC. 43...by Cheryl Milne

When my daughter was placed in my arms for the first time I was struck by one thought, in addition to the powerful emotions that moment evokes – here was a person separate from me, her own self, despite her having been part of my body for almost 9 months. As a children's rights lawyer, you might think that I brought that perspective to parenting. And of course I have. I firmly believe that children are individuals with inherent rights as human beings. But what struck me at that moment in time was the fact of my daughter's individuality: her reddish blond hair (not brown like mine), her blue eyes (also not brown like mine). And that part of my role as parent would be to watch and discover who she will become.

What has been missing from the debate about the discipline of children (the so-called spanking debate) is the fact that children are not the possessions of their parents. Surely, we have moved beyond that dark period when women and children were treated as men's chattel. I don't see myself as having rights over my daughter. I have the important and at times overwhelming responsibility to make choices to nurture her, teach her and keep her healthy and safe. I don't believe I have and I do not want to have the right to hurt her.

And that is what spanking is about. It is a punishment that causes physical pain; it involves a big person hitting a smaller person and it conveys the rather troubling message that might makes right. The discipline debate in the media has suggested that without hitting there is no discipline – that children will be disrespectful and unmanageable. But discipline is about teaching and parents do that many ways. We model good behaviour, we praise and support our children in the hard work they have in growing up and occasionally we admonish and even punish. But punishment does not need to be physical.

Children learn to respect others through the relationships they have with the adults in their lives. I don't want the kind of respect earned through fear of being physically hurt – it is fleeting, as children do get bigger, and I don't like how it affects relationships between children. Ask the bully on the playground how he or she is disciplined at home. Or ask the young people jailed in our youth correctional facilities the same question.

And that takes me to the next level of the debate.

Although I approached the discipline of my daughter from a principled position – that she as an individual like me has the right not to be hit – the research on the subject fully supports me. The research may never say conclusively that spanking children causes specific long-term problems because we cannot ethically do corporal punishment experiments on children. Enough research has been done to say that spanking is a bad idea, it doesn't work in the long term and it may in fact have the opposite effect of what is intended. In other words, children may stop the behaviour in the short term, but in the long term they have not internalized the message that the behaviour itself is wrong. It doesn't take a dozen controlled studies to see what is wrong with, "Whack! Don't hit your brother!"

Reflections of Co-op Students at JFCY

EYES WIDE OPEN

by **Alice Yeung** – Sir John A. Macdonald C.I.

Some say they are rude, others say cold-hearted. Many would even say they can be vicious. So who are these villains? Lawyers of course! They are supposed to help those in need fight for their rights in court, so how did they get such a negative image?

We imagine lawyers strutting around in power suits, briefcase in one hand, cigarette in the other. Their image combines the seriousness found in *The Practice* with the silly antics of *Ally McBeal*. I must admit, before receiving my co-op placement at JFCY, I had fallen prey to the media image of lawyers...the love triangles, the after work lounge where everyone dances and relaxes together, and of course, the dancing in the co-ed washroom.

The reality is much different though. Lawyers, although subject to a great deal of stress, are different than what we perceive. During my time at JFCY I have met some really wonderful people. Everyone is heart-warming and down to earth, it's a shame that is not their image.

JFCY, a non-profit legal aid clinic, helps youth with any legal problems they are facing. Their services are offered free of charge, and they have nothing but the best intentions for their clients. The lawyers at the clinic proved time and time again that the stereotype does not fit.

When I first walked into the clinic I felt instantly at home. The atmosphere was friendly, and family-like. I was bombarded with smiles and greetings, and knew I was going to like it here.

My duties during my placement have been broad. They range from answering phones, speaking with potential clients, to visiting schools to deliver legal information and education. I have also had the chance to visit the Youth Courts and observe trials. This has all given me a better understanding of the life of a lawyer.

After having been at JFCY for 6 months, I can honestly say it takes a lot more than power suits and a mean streak to be a lawyer. Compassion can go a long way, it helps to make you more focused on your work. I had personally never considered working as a non-profit lawyer, however, my opinion has now changed. These people do such good for others that it has opened my eyes to a new career choice. I recommend this placement for anyone looking not only to pursue a career in law, but to help society. Thank you Justice for Children and Youth for adjusting my perception of lawyers and allowing me to see a new reality.

LEARNING FOR ALL AGES

by: **Michael Andonovski** – Humberside C.I.

On February 21, 2002, I had the pleasure of accompanying JFCY staff lawyer Sara Copley, to her presentation at the Scarborough Centre for Alternative Studies. On this occasion Sara was a guest speaker in the OAC Law and Anthropology class.

Sara is the community development lawyer at JFCY, and since joining the clinic last October, has been asked to speak in dozens of classes throughout the G.T.A. Braving treacherous weather and an erratic public transit system, and with "Know Your Rights" cards in tow, we finally arrived in Scarborough ready to begin Sara's presentation. Never having attended one of these sessions, I did not know what to expect.

Sara broke the ice by first asking "Has anyone ever heard of Justice for Children and Youth?" When no one volunteered a response my first thought was, this is going to be a tough crowd! Unfazed, Sara began by explaining who the clinic was, and what their role is in the community. She also explained about bringing forward test cases as a way of changing the law, and brought up the example of one of the better known cases, the Section 43 challenge (a.k.a. "the spanking case").

Sara then moved on to a discussion of youth rights, for example, when a police search is allowed, versus when it might be illegal. Another area of particular concern for youth involves youth records: what are they; how long do they last; who gets to see them etc.? Finally, she ended with a discussion of suspensions and expulsions.

Throughout the presentation, you could see that the students were interested in much of what Sara had to say. They listened intently, and their questions were often quite thoughtful, and the answers were usually beneficial to the rest of the class.

I, like many of the other students who have heard one of Sara's presentations, found it contained a lot of useful information.

If anyone reading this newsletter knows of a school or youth group that could benefit from one of these presentations by a lawyer at JFCY, please contact us at 416-920-1633.

Clinic Update

CASE UPDATES

SECTION 43

In March 2002, **Cheryl Milne**, a JFCY staff lawyer, and **Paul Schabas**, a lawyer at Blake Cassels and Graydon, filed leave to appeal at the Supreme Court of Canada on JFCY's constitutional challenge to the corporal punishment provisions of Canada's Criminal Code (sec. 43). They expect to find out whether they have been granted leave to appeal sometime in the fall of 2002.

HAWTHORNE

JFCY was granted leave to intervene at the Federal Court of Appeal on an immigration case concerning the requirement to take the best interest of the child into account in immigration proceedings involving the parents. JFCY has previously argued this issue successfully at the Supreme Court of Canada in the *Baker* case. However, the government position is that the requirement is satisfied by taking into account whether the child will suffer "undue hardship". **Naomi Johnson**, our SYLS lawyer, and **Cheryl Milne** have filed their factum with the court. As of yet, no date has been set for the appeal.

LASTMAN

Martha Mackinnon, Executive Director, and **Lee Ann Chapman**, staff lawyer, will argue as intervenors before the Ontario Court of Appeal in the "Lastman" case on May 14, 2002. JFCY will argue that parents owe a fiduciary duty to their children, that children have a right to know the identity of their parents, and that Canadian law must be interpreted in such a way that takes into account that Canada is a signatory on the Convention of the Rights of the Child.

SAFE STREETS ACT

Mary Birdsell, (currently on leave) and **Peter Rosenthal** (counsel for OCAP), argued their appeal of the Ontario Court of Justice decision to uphold the *Safe Streets Act* before the Superior Court of Justice on March 20-21, they are awaiting a decision. They argued that the *Act* violated the *Constitution*, including freedom of expression and the equality rights provisions.

HALL v. R.C. BOARD OF DURHAM

Sara Copley & Cheryl Milne, staff lawyers, will argue as intervenors in the case of a graduating student who was told he could not bring his boyfriend to the prom. Marc Hall is claiming damages for violating his rights of equality, as well as freedom of association. He also claims that the Catholic School Board contravened the *Education Act*, and further, that they breached their fiduciary duty to him. Marc Hall is represented by David Corbett of Ebert, Symes & Corbett. He will also be asking for an injunction both to keep the Board from preventing Marc from bringing his date, and from cancelling the school prom. The case will be heard in Whitby.

SPECIAL PROJECTS UPDATE

by Andrea Monahan

Over the past few months the Foundation has been busy with several ongoing projects. With the assistance of an external researcher, the Foundation is nearing the completion of a Needs Assessment on the legal needs of street-involved and homeless youth in the City of Toronto. The final report, which will be produced by the end of June 2002, will be used to guide the clinic in its expansion of the SYLS program and in the development of legal resources specific to the needs of homeless young people. The Foundation would like to thank the City of Toronto and HRDC for the financial support necessary to carry out this project.

With funding from the Department of Justice Canada, the Foundation is in the process of producing posters and wallet cards with information on the effects of a youth court record. The art work for the cards is being designed by a young person in the community and these cards will be printed in several languages. We look forward to distributing this information to young people around Ontario.

We will continue to provide updates on these and other projects undertaken by the Foundation.

out of office experiences

In addition to the many presentations made in schools and drop-in centres on a regular basis, our staff (in particular our senior lawyers), are invited to speak at numerous conferences, here is a sample of some of those over the past year:

Martha Mackinnon:

CAPSLE 2001 - S.43 Criminal Code; Lorman - Safe Schools Act; Lancaster House - Safe Schools Act; Canadian Institute - Child's Perspective in the Privacy of Health Information; OBA - Safe Schools Act; Butterworths - Safe Schools Act; CAMH – Youth Criminal Justice Act.

Cheryl Milne:

Education Rights and Responsibilities, Youth and the Law and Student Rights Advocacy Training for Agency Advocates, workshops co-sponsored by the Kenora Community Legal Clinic, Grand Council Treaty #3, Special Education: The Student Perspective, for Osgoode Hall Law School
Sec. 43: Child Physical Assault Intervention Workshop, Winnipeg

Lee Ann Chapman

Ontario Model Parliament – Children's Rights vs. Parent's Rights

Sara Copely

Save The Children Canada – The Right Way Program

Naomi Johnson

The Mobilizer Youth Employment Conference-Life Challenges

THE HISTORIC STATUS OF CHILDREN

Excerpt from Bracton on the Laws and Customs of England

(attributed to Henry of Bratton, c. 1210-1268)

Of the differentiation of children.

“Since it was said above that natural and legitimate children are called to the succession before others, it will be useful here to consider the status of children and the differences between them, which are many. Some children, as said above, are natural and legitimate, those born in lawful wedlock and of a lawful wife. Some are natural only and not legitimate, as those born of a legitimate concubine with whom a marriage was possible at the time of procreation, as between an unmarried man and unmarried woman. Some are neither legitimate nor natural, as those born of prohibited intercourse, of persons for whom no marriage was possible at the time of procreation; such children are *spurii* who are fit for nothing. Some natural and legitimate children are children and heirs, as those to whom an inheritance descends, either from the father or the mother or from both, in demesne or in service. Some are children and not heirs of one but children [and heirs of the other], according as the inheritance descends only from the father’s side or the mother’s. And some are natural and legitimate children but heirs of neither, because no inheritance descends to them from either side. [Some may begin to be heirs and cease, some may not]. Of those who are natural, legitimate and heirs, all, however many they are right and lawful heirs, as many as descend by degrees from the common origin, first through the right line.” ...Confused?!!!

Things have been somewhat simplified under the *Childrens Law Reform Act* R.S.O. 1990, c.C.12

1. (1) Rule of parentage- Subject to subsection (2) [exception for adopted children], for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage.

KIDS KORNER
KIDS KORNER

THANKS TO SIX YEAR OLD **BETSY MILNE** FOR BEING OUR FIRST EVER CONTRIBUTOR.

WE WOULD LIKE TO INVITE ANYONE UNDER THE AGE OF 13 TO SEND IN DRAWINGS, POEMS, JOKES, OR SHORT (VERY SHORT) STORIES FOR OUR NEXT NEWSLETTER.



Announcements

CONGRATULATIONS!!

Our office manager **Annie Lacroix** and husband Todd welcome the arrival of their daughter, Astrid, born April 29, 2002.

BEST WISHES!

Thank you to our co-op students:
Michael Andonovski
Tania Hassan
Mitzie Hyre
Alice Yeung

MANY THANKS FOR ALL THEIR HELP.

WELCOME New Support Staff!

Tressa De Souza joins us from the Ministry of the Attorney General.
Le Huong Truong, an accounting graduate, who plans to attend law school in the fall.

MANY Thanks and Goodbye!!!

to our social work co-op students:
Augustine Jatoe is off to York to do an M.S.W. in social and family policy.
Else Knudsen plans to finish her M.S.W. this summer... her long term goal is policy work in child welfare or corrections.

WITH GRATITUDE!

to **BLAKES CASSELS & GRAYDON** for allowing articling student **Nick Adamson** to donate his legal expertise to our clinic
Thanks and good luck Nick!
We look forward to the arrival of **Mike McGraw**.

CONGRATULATIONS

Andrea Monahan (JFCY staff) & **David Ogilvie** on their upcoming marriage.

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:

FRANKIE FOO and THE THIN SKULLS

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.

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