

Justice for Children and Youth

Canadian Foundation for Children,
Youth and the Law

NEWSLETTER

October 2004

Message from the President – Paul Wollaston Salute to Volunteers

Volunteering brings benefits to both society at large and the individual volunteer. It contributes to more cohesive communities by building understanding and reciprocity. At Justice for Children and Youth we applaud the commitment and engagement which are the foundations of volunteerism.

Legal aid clinics such as ours rely on volunteers for their governance. Our board of directors come from a wide variety of professions and life experiences. However, their commonality arises from a shared interest in young people and a desire to respond to their legal needs. As we approach our annual general meeting, I would like to thank the board members who volunteered their time and talents to ensure the smooth running of Justice for Children and Youth over the past year.

This year we have benefited from volunteers with a wide variety of skills. Since last winter, lawyer Alexandra Martin has been working on client intake, as well as preparing public legal education materials. Jennifer Schaffer has been a contributing member of the policy committee and helped draft our new *Know Your Rights* book. Special thanks to David Day, Stephen Lamont and Ruth Hislop for double duty as board members and policy committee stalwarts. Over the year we have called on the volunteer members of the policy committee to give input on a number of issues facing young people. We have also asked their help in drafting position papers and letters to policy makers.

In thanking the many volunteers who contribute so much to Justice for Children and Youth, we recognize the great generosity of young people. The Youth Advisory Committee, as well as law students, articling students and social work students bring their skills and valuable youth perspectives which greatly contribute to the clinic's goals. We must continue to ensure that their contributions and altruism are recognized and encouraged.

We also extend our gratitude to The Advocates' Society and Pro Bono Lawyers of Ontario. The generous contribution of their legal expertise, has helped to expand our capacity to help young people across Ontario.

Volunteers are a vital element of our continued success. Thank you for your dedication.

26th Annual General Meeting Thursday October 14, 2004.

St. Andrew's Presbyterian Church
73 Simcoe Street
(corner of King & Simcoe)
6-9pm
contact JFCY for more info
(416) 920-1633

Justice for Children and Youth BOARD OF DIRECTORS 2003 – 2004

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Summer Students

Law Student – Mike Pacholok

I am a third year University of Toronto law student who had the pleasure of working at Justice for Children and Youth (JFCY) through a Donner Foundation grant. I originally learned about the work JFCY does while I was working with *Pro Bono Students Canada*, and through a talk given by Martha Mackinnon on the rights of children. It was the opportunity to be exposed to many different areas of law that drew me to JFCY.

My primary project at JFCY was to draft public legal education materials in the area of education law. Specifically, I was asked to work on pamphlets for youth who may face suspension or expulsion from school. As a result of the *Safe Schools Act* of 2001, there has been an increase in the number of Ontario students facing “mandatory” suspensions and expulsions. Many of these students are minority students and disabled or special needs students. A full expulsion results in exclusion from all Ontario schools, many of these expulsions are never appealed. The appeal process for either suspension or expulsion is complex, and the pamphlets are designed to help students and parents navigate through the process and tell them where to access help.

I also worked on the JFCY intake line. This experience not only increased my knowledge in a variety of areas of law, but also allowed me to have direct client contact. After the initial call I would conduct research into the issue and then consult with one of the great lawyers in the office. One intake call resulted in a custody application which I had the opportunity to draft for the client, and then I filed the application with the Ontario Court of Justice. It was very rewarding to be able to help young people who often are not aware of their legal rights, and how to exercise those rights.

My experience at JFCY has opened my eyes to the various issues that young people face, and how they are treated throughout our justice system. Although my career goal is not to concentrate on youth issues, the experience did confirm my desire to help people with personal legal issues, rather than practice in the areas of commercial or corporate law. Thank you to *Pro Bono Students Canada*, the Donner Foundation and Justice for Children and Youth for giving me this opportunity.

Summer Work – Student Exchange*

My name is Mathieu Desmeules, I'm 17 years old, from *Ville Saguenay, Quebec*. In June, I graduated from *Lycee du Saguenay Secondary School* and in September I will be in the science program at the *Cegep de Chicoutimi*. This summer, I decided that I wanted to travel...

I decided to do the Summer Work - Student Exchange. I liked this program because I could work and earn money, meet new friends, have a nice trip in Canada AND improve my English skills. I am staying in Toronto for the summer and I like that. I couldn't have a better host family. I met nice new friends and my job is great!

I work at Justice for Children and Youth. Everybody is nice to me there. They brought me with them to the court and to community centres and I really appreciated it. I did not improve my speaking skills as much as I wanted, but my reading skills are higher than ever before. I learned a lot about the lawyer's work, the justice system and youth and children's rights.

Like I said, my summer job helped me to realize what the lawyer's work is. Before, I thought that the lawyers were always at the court or in discussion with clients. But I realize that they have to work hard to be able to help the children with their problems. They always have to read, to study, to update their knowledge because the laws are always in evolution. More than that, at JFCY, the lawyers meet the youth and the children in the schools and the Community centres to educate them.

Finally, I won't forget my extraordinary summer in Toronto, Ontario!!!

*program of the Council for Canadian Unity

SERVE CANADA AT JFCY

Serving Up Justice in the Community

By: Rhonda Major

Youth in our communities touch on a variety of subjects in their schools, everything from mathematics to English Literature and Theatre Arts. What about the basic rules of urban survival? How to shop for groceries and maintain a balanced lifestyle? Finding affordable accommodation? Knowing their rights with the law?

Serve Canada provides opportunities for youth to develop leadership and teamwork skills and achieve personal growth through community involvement, education and training. We enable diverse young people to achieve their own goals and define their roles as responsible members of society.

For the past 5 months, Diversitron, one of our full time "Experience This" teams, has been working in collaboration with Justice for Children & Youth to develop workshops for youth on their rights with the law. Diversitron Team Members were educated in areas of the law by Justice For Children & Youth Staff Lawyer Emily Chan. Areas covered included police search rights, squeegeeing and panhandling laws and changes to marijuana laws. Working in pairs, Team Members then created interactive and informative workshops for youth that were presented throughout the City of Toronto. Our Project attempted to reach youth outside of traditional structures (such as school). We presented at Christie-Ossington Community Centre, the Toronto Youth Cabinet, Loft SOS

and many other community organizations that service the youth community.

Not only were Team Members able to educate themselves on areas of the law they had never explored, in turn they were able to reach out to youth and share their knowledge. The entire project was an empowering experience for Serve Canada's youth. During the Team's last month with Justice For Children & Youth, we attended court sessions both at Osgoode Hall and Youth Court (311 Jarvis). Team Members had the opportunity to meet with Crown Attorneys, Judges and various other officers of the court. The youth sat in on court sessions and had the opportunity to see court holding cells. This interaction allowed all of us to gain a much more in depth understanding of the law and its processes.

Diversitron has completed a video summarizing their knowledge of various aspects of the Youth Criminal Justice Act, Youth Records and other aspects of the law. Justice For Children and Youth will be using this video in future presentations to community groups. We've enjoyed our partnership with JFCY and hope to be able to collaborate with them on projects in the future. Thank you for sharing your knowledge with our community.

Rhonda Major is a Team Facilitator for Serve Canada's full-time experience this program. For more information on Serve Canada, you can check out their website at:
www.servecanada.org.

In Louise's Own Words

I think as Canadians, we should all be taught our rights in law, and it should start in school. As children, we are punished for the wrong things we do and rewarded for the good. So shouldn't we learn in school about the punishments that are given to young adults by the higher authority? Now don't get me wrong, I'm not blaming the school board for anything. But I just feel that if youth law was apart of our curriculum in school, youth today would think twice about their actions.

Being in Serve Canada, is an opportunity that I cannot take for granted. Serve Canada is an eight to nine months program that allows youth between the ages of 17 and 25, to experience numerous kinds of volunteer work. During the program, we collaborated with many organizations to create educational workshops for young people. One of these organizations was, JFCY (Justice for Children and Youth) a lawyer's office. At JFCY, we put together workshops on youth street laws involving their rights. Working with JFCY really opened my eyes to an unknown world that surrounds me everyday involving the younger generation. Knowing what I know now makes me happy because I can continue to educate myself on what I already know. But this also makes me a bit sad. I think if more youth had the chance to know this information, probably their thoughts on the law would be more positive and inspire them to do something big in their society.

Feature Article

Protection Gap for Unaccompanied 16 And 17 year-olds Seeking Asylum in Ontario

by Michael Fakhri

Associate with Swadron Associates and volunteer with the Canadian Red Cross Humanitarian Issues Program. This article represents the author's personal views and not that of any organization.

Every day children arrive to Canada seeking asylum and refuge without parents or guardians. These are among the most vulnerable members of our population. The difficulties they face may be compounded by the lack of support and protection available to them which is dependent on their age and the province where they first arrive.

The Immigration Refugee Protection Act (IRPA) regulations use the term “unaccompanied child” to describe a person under 18 years who arrived in Canada and is not accompanied by a person aged 18 years or more. However, even in cases where there is an accompanying adult, that adult may not be willing to assume the role of a guardian with respect to the young person. The United Nations High Commission on Refugees defines a “separated child” as a person who is under the age of 18 years and is separated from both parents and is not being cared for by an adult who by law or custom has the responsibility to do so. The term “separated” may be a more appropriate term, in light of the fact that the young person may not be able to depend on the adult who arrives with them for support. Many of these vulnerable young people who land in Ontario without a parent or guardian, are not receiving the care and protection that is necessary, due to a protection gap in Ontario’s child welfare legislation. The matter is even more dire for those youth detained on a security certificate.¹

PROTECTION GAP

Even though under Canadian law a person is considered a minor until the age of 18 years, in Ontario and some other provinces, child welfare protection is only offered up until the age of 16 years. Child welfare services in Ontario are provided by a network of government-funded Children’s Aid Societies (CAS). The CAS has a legislative mandate under the *Child and Family Services Act* (CFSA) to only protect children less than 16 years of age or children who were under the care of CAS before they turned 16 years old. This creates a protection gap for 16 and 17 year-olds generally, and more specifically unaccompanied minors landing in Ontario. Immigration Officers and other professionals have a duty to report a child under 16 to CAS whom they believe may be in need of protection. However, this duty does not extend to unaccompanied minors who are 16 and 17 years old and enter Canada through Ontario. While statutorily correct, the protection gap may not comply with the CFSA’s stated paramount purpose to promote the best interests, protection and well being of all children in Ontario.

The protection gap may also contravene s. 15(1) of the Canadian *Charter of Rights and Freedoms* which states that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on various grounds including national origin or age. This discrimination also contravenes international law. Article 1 of the *Convention of the Rights of the Child* (CRC), defines a child as anyone under the age of 18. The lack of care for 16 and 17-year-old children in Ontario does not comply with Article 2 of the CRC which disallows discrimination against young people on the basis of age (amongst other grounds). Furthermore, this gap contravenes the Article 3 which states that a social welfare institution or administrative authority shall make the best

¹ Further reading on this issue see July 2001 United Nations High Commission for Refugees (UNHCR) Discussion Paper entitled “Separated Children Seeking Asylum In Canada” by Wendy Ayotte as well as by the International Bureau for Children’s Rights publication entitled “Best Practice Statement on Separated Children in Canada”.

interest of the child its primary concern. Canada ratified the CRC in 1991 but has not yet implemented it domestically. However, in light of two recent Supreme Court cases *Baker v. Canada (Minister of Citizenship and Immigration)* and *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* the CRC is gaining a stronger foothold in Canadian law.

The protection gap may also not comply with IRPA, creating a tension between provincial and federal law. While the provincial legislation does not provide protection for 16 and 17 year olds, the federal legislation (IRPA) explicitly states that it is to be applied in a manner consistent with s.15(1) of *Canadian Charter of Rights and Freedoms* and with international human rights instruments to which Canada is a signatory, including the *Convention on the Rights of the Child*.

DETENTION OF UNACCOMPANIED YOUTH

The protection gap is more objectionable in the case of detained unaccompanied youth. The Canadian Council of Refugees, in its November 2003 Annual Report Card on Canada's Refugee and Immigration Programs, concluded that IRPA still does not systematically incorporate its obligations under the CRC, notably the duty to give primary consideration to the best interests of the child in all decisions affecting a child. The Canadian Council of Refugees also noted that the detention of some children continues to be a concern as from mid-June 2003 to mid-October 2003, there were on average 17 minors in immigration detention each week. The Canadian Council of Refugees concluded "there is still no national policy on separated children seeking asylum in Canada, a lack that recently raised the concern of the UN Committee on the Rights of the Child."

The Government of Canada may determine that a permanent resident or a foreign national is inadmissible to Canada on grounds of security, violation of human or international rights, or involvement in serious criminality or organized criminality. In such a case the Minister of Immigration and the Solicitor General of Canada sign a security certificate and refer it to the Federal Court. The Minister of Immigration and the Solicitor General of Canada may then issue a warrant for the arrest and detainment of the person named in the security certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal. A foreign national who is named in a security certificate *shall* be detained without the issue of a warrant. In Ontario, these people are detained at the Heritage Inn, a converted hotel, or at the Metro West Detention Centre.

Different groups have been displeased with this system of detention. Due the secretive nature of these security certificates and corresponding legal proceedings they have been severely criticized by organizations such as Amnesty International and the Law Union of Ontario. Moreover, various Arab and Muslim communities in Canada have felt like they have been specifically and unfairly targeted.

IRPA states that every minor child in Canada shall be detained as a measure of last resort, taking into account other applicable grounds and criteria including the best interest of the child. The best interest of this child is not a primary consideration. IRPA also notes that special considerations with respect to detention are to be given to minor children. The "special consideration" is weakened in Ontario by the fact that the CAS does not have the legislative mandate to help a 16 or 17 year-old minor child.

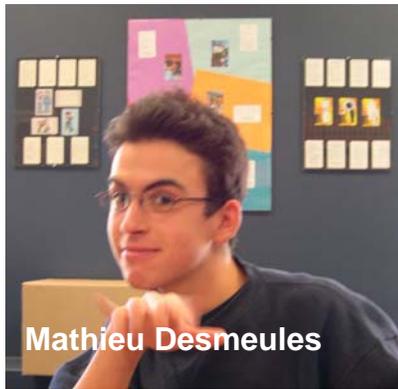
The protection gap of 16 and 17 year olds in Ontario is inconsistent with both domestic and international law. This is not new news for practitioners who work with young people. What makes the issue of concern is that Canada receives more asylum seekers every year, affecting larger numbers of unaccompanied youth. Some of these youth are detained under controversial security certificates. This inconsistency should be embarrassing to Canada because it is a nation of immigrants which purports to lead the way in human rights.



Bulletin Board



Mike Pacholok



Mathieu Desmeules

Street Youth Legal Services (SYLS)

FUNDRAISING EVENT

Date: Tuesday November 2, 2004

Time: 7:00 p.m.

Where: Toronto City Hall – Council Chambers

Come and join us for Wine and Cheese
and hear

Best-Selling Author and Parent Educator

Barbara Coloroso

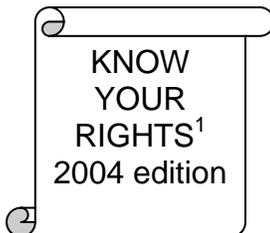
call JFCY [416-920-1633] for tickets – \$25.00 per person
All proceeds / donations to benefit SYLS program

Charitable Tax Receipts issued upon request



Serve Canada

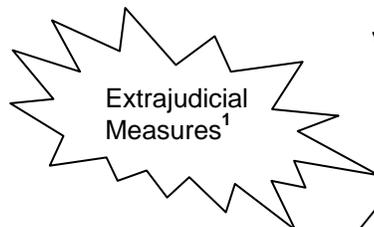
CHECK OUT THESE NEW JFCY
PUBLICATIONS



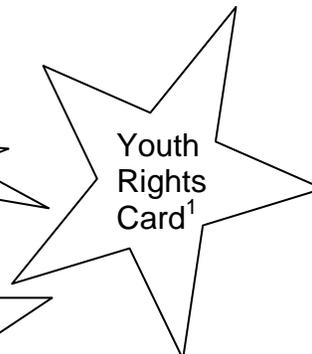
KNOW
YOUR
RIGHTS¹
2004 edition



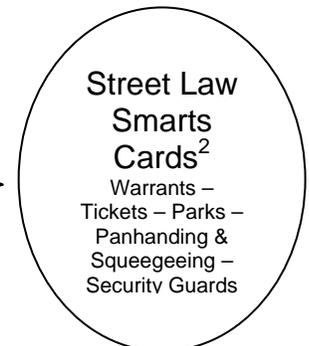
Updated
Teen Street
Guide²



Extrajudicial
Measures¹

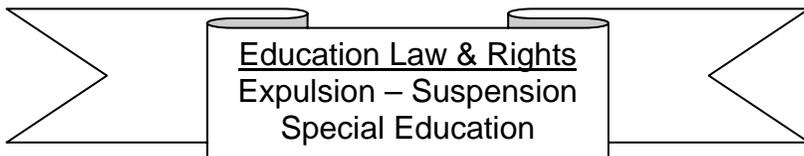


Youth
Rights
Card¹



Street Law
Smarts
Cards²

Warrants –
Tickets – Parks –
Panhandling &
Squeegeeing –
Security Guards



Education Law & Rights
Expulsion – Suspension
Special Education

1. Funded by Dept. of Justice
2. Funding from SCPI

A Word from the Executive Director

Martha Mackinnon

So much of the time at Justice for Children and Youth we feel challenged and too busy. I myself feel burdened with increasing administrative demands. All staff have experienced increased demands because of the *Safe Schools Act* and the *Safe Streets Act*. Despite society's public platitudes – "Our children are our future", "It takes a village to raise a child", "Our children are our most valuable natural resource" – we continue to fail our young people. The wait lists for mental health and other treatment services are much too long – often longer than for adults. It is hard to imagine adults who are better off for not being educated. Yet we suspend and expel enormous numbers of students in Ontario every day. Legal Aid Ontario has not had an increase to its budget in more than five years and at the clinic, we have had no increase to our staffing. There is constant pressure to do more with no additional resources.

Is this discouraging? Yes, in the sense that there are always discouraging moments when your work is to improve the lives of our most vulnerable and disadvantaged. But there are also so many moments of pride, and the recent months have brought much satisfaction to the clinic and a number of JFCY projects to fruition.

We received funding from the federal Department of Justice to publish a brand new Know Your Rights. This 68-page booklet has been completely re-written to reflect the *Youth Criminal Justice Act* that replaced the *Young Offenders Act* in 2003. It has a new design and includes original artwork by an aboriginal young person. It is being distributed across Canada – a first for JFCY!

We received SCPI funding from the City of Toronto and HRDC to create a series of 5 plastic cards setting out the laws that affect street-involved youth. The artwork for these cards was created by a street-involved young man who has used this successful project to create a portfolio and increase his employment skills. The artwork has made the cards highly attractive to our clients. We also created a series of 13 information sheets for staff at youth-serving agencies to supplement the information on the cards.

We received funding from the Department of Justice to update our first plastic card (If You Are Questioned or Arrested by Police) to reflect the new *Youth Criminal Justice Act* and to reflect the changing language needs of Ontario's immigrants. With the help of a volunteer lawyer, Alexandra Martin, we also created a new plastic card to explain to both young people and those who work with them how to find out about the community resources that do exist to change youthful behaviour and support young people, as more effective alternatives to courts.

With the help of a Donner Fellowship summer student, Mike Pacholok, we completed 2 more education law pamphlets: one on expulsions and appeals, one on suspensions and appeals. Already we have distributed more than 150 of the expulsion pamphlets.

... continues on page 8

... continued from page 7

So when we are discouraged about our inability to meet all the legal needs of young people across the Province, and when we are disappointed by legislation that makes the lives of young people more difficult, we remember how much we are able to do. Our participation in the Meffe Inquest helped lead to the closing of the Toronto Youth Assessment Centre (TYAC). Our constitutional challenge to section 43 of the Criminal Code resulted in a significant reduction in the violence against young people that will be tolerated (our next newsletter will focus entirely on the physical punishment of children). Our training sessions for lawyers willing to help students on a *pro bono* basis have resulted in a greatly increased pool of skilled lawyers for our client base.

We are, as ever, grateful to our core funder, Legal Aid Ontario for funding us for the last 23 years of our 26-year history. And I am personally deeply appreciative of the stalwart staff that funding maintains. We are also grateful to other funders and partners who do know how valuable and vulnerable children are, and help us expand our capacity to make a difference: the Department of Justice, the City of Toronto and HRDC, the Law Foundation of Ontario, Pro Bono Law Ontario, The Advocates Society and the many private bar lawyers who take kids' cases and go well beyond the scope of a legal aid certificate or act *pro bono*.

Test Case Updates

Test Case Updates

Hlusko v. Halton District School Board

Martha Mackinnon

Jamie Hlusko was a grade 8 student who had been identified in the normal special education process (IPRC) as exceptional (gifted) and had been placed in a special class. The IPRC review at the end of his grade 8 year placed him in a regular class in high school. The School Board did not offer self-contained classes appropriate for Jamie at the secondary level and had created a Special Education Plan that showed all gifted classes ending at the end of elementary school. The Hluskos appealed to the Ontario Special Education Tribunal. The School Board objected, saying that the Tribunal could not make orders that would place Jamie in a class not offered by the Board. The School Board has taken its objection to a Judicial Review in Ontario Divisional Court.

Justice for Children and Youth sought and obtained leave to intervene in the Judicial Review. Our arguments will relate to the jurisdiction of the Special Education Tribunal to order appropriate placements for all exceptional students – students with intellectual disabilities, students affected by autism, students with fetal alcohol syndrome, students with hearing or visual impairments, students with learning disabilities, students with Asperger's Syndrome. All exceptional students should be able to be placed in an appropriate classroom. School Boards should either offer or purchase appropriate placements for all their students. The Attorney General of Ontario has also decided to intervene with a similar perspective to ours.

Test Cases cont...

Test Cases cont...

MEFFE INQUEST

Cheryl Milne

David Meffe was 16 years old in September 2002, when he was detained in the Toronto Youth Assessment Centre on crimes relating to theft and fraud. He had been placed on a suicide watch when he first entered the facility and placed in a secure isolation cell. A few days later he was moved to a regular cell on a 30-minute suicide watch. In the early evening of October 1, 2002 he was found hanging in his cell from a metal bar on his bed with a bed sheet wound around his neck. He died on October 9th after being removed from life support.

Justice for Children and Youth was granted intervener status in the inquest to represent our perspective as legal experts on the rights of youth in custody. We worked cooperatively throughout with a youth group supported by Defence for Children International – Canada, the Youth Justice Action Group, who were also granted separate status to represent the interests of youth in custody. Over the course of the over 6-week hearing we heard from corrections staff who worked at the facility as well as young people who had spent time there. Justice for Children and Youth called one witness, a former client we called “Tony”, who had attempted suicide in the facility, prior to David’s death, in a similar manner. Tony offered recommendations for the jury to consider. They were as follows:

1. Close TYAC (which was echoed by everyone in the room).
2. Staff should open up a little more, joke a little more, talk a little more (which turns into “relationship custody” in the hands of bureaucrats and social scientists – but means the same thing).
3. More social workers (a social worker made the difference for him; but it speaks to the importance of advocates, case managers, and simply people who care).
4. More programs (recommendations speak to dawn to dusk programming).
5. Don’t treat us like animals, just be more humane (Tony’s description of secure isolation: “cold, damp, pretty lonely, sad, degrading; it drove me really insane”).

On April 8, 2004, the Coroner’s Jury released its recommendations pertaining to the conditions of TYAC, the need for open detention, the treatment of suicidal youth in custody and the proposed conditions for a new custody facility for young people in the Toronto area. Prior to the end of the hearing, the Minister of Correctional Services had announced that TYAC would close. On the last day of evidence the Premier announced that it would close by June 30, 2004. It did, in fact, close on June 30, 2004 as promised.

Marc Hall

Cheryl Milne

We have been granted intervener standing in the trial of the case Marc Hall v. Powers and the Durham Region Catholic District School Board. JFCY will be providing written submissions only. Despite the fact that March Hall was granted the right to attend the school prom with his same-sex date, the order was made on an interim basis only. The trial will address his claim for a declaration that will affect other students in similar situations in the future as well as his claim for damages.

Test Cases cont...

Test Cases cont...

Safe Streets Act

Mary Birdsell

The Safe Streets Act (SSA) of Ontario prohibits people from soliciting in many places and circumstances (at transit stops, pay phones, ATMs, parking lots or while intoxicated, following along, persisting) and it prohibits anyone from soliciting on the roadway. In other words, it restricts panhandling and prohibits squeegeeing.

Our clients – young people who are street involved – feel unfairly targeted by this legislation. In conjunction with several street youth serving organizations and OCAP we collected over 100 tickets that had been given to many individuals in the winter of 1999 and spring of 2000. We brought the matters to court to defend the people who had been ticketed by challenging the SSA under the Charter of Rights and Freedoms.

Of the original 100+ tickets, more than 90 of them were thrown out of court for lack of evidence. We then proceeded on 13 individual matters where we acknowledged that the bare facts of each case made out a violation of the law, but the law violates the Charter of Rights.

We have argued to the courts that the SSA violates our clients' right to free expression, right to equality, to life liberty and security of the person, to the presumption of innocence and that the SSA is an intrusion into the federal government's criminal law power. We lost our case in the Provincial Court and then appealed to the Superior Court.

We have now been waiting 2-1/2 years for a decision from the Ontario Superior Court of Justice. This is an outrageous length of time to be waiting – in fact the court strives for a standard of issuing decisions within 6 months. In the last 6 months we have written 2 letters to Justice Dambrot in hopes of getting a decision. We just recently received a letter of response from the Judge - the letter says that he regrets not having completed his judgement, but that he is busy until at least the end of November and will write his decision after that time.

Meanwhile, on the street during the summer of 2004 we have seen a vigor in ticketing by police that we have not seen since the SSA was first enacted in 1999. Police have been aggressively ticketing and holding people in custody, and to add insult to injury, Justices of the Peace have been imposing illegal bail conditions. Emily and I have been appearing in court in an effort to prevent and remedy these injustices, but much damage has been done to the individuals who continue to be targeted by the police.

Further on the subject of adding insult to injury – a Bill has passed second reading in the legislature that will exclude federally registered Charities from prosecution under the SSA. This would mean that firefighters, the Goodfellows or your favourite Legal Clinic could squeegee windows for money, but young people who need money for food may not.

**Watch for our Special Edition Newsletter on Section 43
The Supreme Court of Canada decision
One year later – Ongoing Advocacy**

Test Cases cont...

Test Cases cont...

Piran Ahmadi Poshteh v. The Minister of Citizenship and Immigration

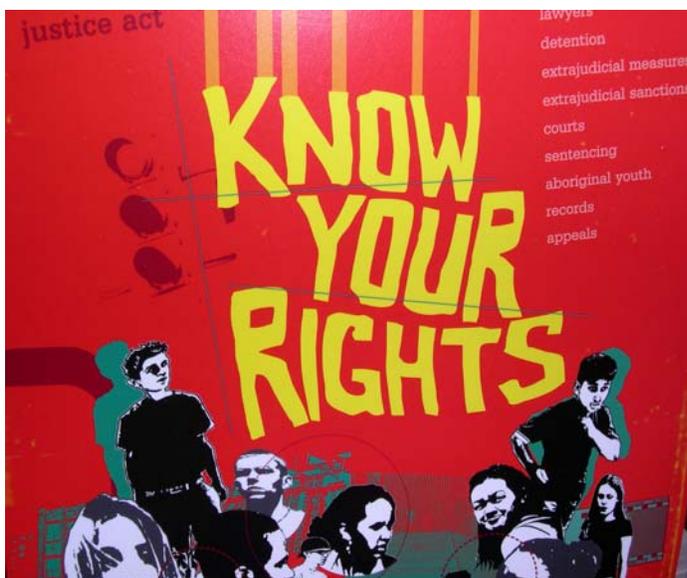
Lee Ann Chapman

The Canadian Foundation for Children Youth and the Law has been granted intervener status on an immigration appeal before the Federal Court of Appeal.

Piran Ahmadi Poshteh is an Iranian citizen who arrived in Canada on September 16, 2002. He was 18 at the time. Upon his arrival he made a refugee claim but a short time later that claim was suspended pending an admissibility hearing into an allegation under s. 34(1)(f) of the *Immigration and Refugee Protection Act*. It was alleged that as a result of statements during his immigration examination, reasonable grounds existed to believe that he was a member of the Mujahedin-e-Khalq (the "MEK"), a group which the government believed to be engaged in terrorism. The contested issue at the hearing was whether there were reasonable grounds to believe that Piran Poshteh had been or was a "member" of the MEK within the meaning of s. 34(1)(f). His only activity was distributing leaflets for the MEK over a two-year period starting at age 15 and ending when he was 17 years old. Mr. Poshteh's lawyer took the position that, in contrast to the broad interpretation of "member" in cases concerning the activities of adults, the word "member" in s. 34(1)(f) should be given a restrictive interpretation in this case having regard to his status as a minor at the time of his involvement with the MEK. He lost at the hearing and at a subsequent review of the decision. A deportation order was issued.

The Foundation will argue that the Supreme Court of Canada has established an obligation on the part of immigration officials to consider the best interests of any children who will be affected by decisions made under the *Immigration Act*. Further, the vulnerability of children, and the duty of society to protect them was articulated by the Supreme Court in *Canadian Foundation for Children Youth and the Law v. Canada*.

The Foundation will also argue that the *Convention on the Rights of the Child* requires State Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the *Convention*. It is expected that the appeal will be heard in either October or November 2004.



**Front Cover
New
Know Your Rights**

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 enrol me as:

- an individual member, \$20.00 an organization, \$50.00
- a sustaining member, \$100.00 (lifetime) a youth member (17 & under), free
- a full-time student member, free

NAME / ORGANIZATION: _____

ADDRESS: _____

TELEPHONE (B): _____
(Area Code)

TELEPHONE (H): _____
(Area Code)

EMAIL: _____

I am interested in the following Committee:

- Policy Committee Youth Advisory Committee (under 25)
- Fundraising Committee 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
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