

Justice for Children and Youth

Canadian Foundation for Children
Youth and the Law

NEWSLETTER

SEPTEMBER 2002

JUSTICE FOR CHILDREN AND YOUTH BOARD OF DIRECTORS 2001-2002

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***DON'T FORGET TO MARK
OCTOBER 8th ON YOUR
CALENDAR FOR THE
ANNUAL GENERAL
MEETING***

THOUGHTS FROM THE EXECUTIVE DIRECTOR

Martha Mackinnon

As I sit in Toronto at the beginning of a new school year, chaos or the fear of chaos is in the air. The Minister of Education has appointed supervisors to run three large school boards – Toronto, Ottawa and Hamilton – that have failed to submit a balanced budget.. The trustees have not been removed, but they have been told that they may not govern their boards and may not make budgetary or financial decisions. They are still to do student discipline hearings (expulsions and suspension appeals) and may represent the views of parents and electors, but not spend money to resolve their issues. They are uncertain as to whether they may use the Boards' photocopiers.

The media report outcries in Ottawa when the supervisor cut 50 positions in special education; the Minister comments that exceptional students will still be able to go to school. In Toronto, the Premier suggests that money should be spent on textbooks, not pool chlorine; the supervisor says that he can't balance the budget this year any more than the trustees could., and , though he wants to make sure there are no cuts "from the classroom", he will not say what he thinks the classroom is.

Spokespersons for several immigrant communities say that any cuts to second language and heritage language programs will cause an increase in racism and barrier between generations of immigrants who will not be able to communicate with each other, even within their families.

September 11th approaches with intense media attention. Many Ontario schools will mark the day with special programming, particularly focussing on tolerance, diversity , cross-cultural understanding and peace studies. In the United States, there is a debate about whether such an approach reflects at best moral relativism, at worst immorality.

Underlying all the rhetoric on all sides of the issues is the question: what is education.? No dictionary or thesaurus can answer this question, although James Truslow Adams suggests a multiplicity of answers when he says: There are obviously two educations. One should teach us how to make a living, and the other how to live.

For one person, swimming is not education; it is a leisure activity. For another, swimming is the only activity a child with asthma or another disability can do to get a credit in physical education. For one person, English as a Second Language is not education; it is immigrant settlement services and a federal responsibility. For another, one cannot ...continued on bottom of page 5

SPECIAL FEATURE

Summary of Age-Based Legal Milestones for Youth in Ontario

Amaa – Age of Majority & Accountability Act

CAS – Children’s Aid Society

CCC – Criminal Code of Canada

CFSA – Child and Family Services Act

CLRA – Children’s Law Reform Act

CNA – Change of Name Act

Ed Act – Education Act

FLA – Family Law Act

HCCA – Health Care Consent Act

HRC – Human Rights Code (Ontario)

HTA – Highway Traffic Act

ITA – Income Tax Act

MA – Marriage Act

MFIPPA – Municipal Freedom of

Information

and Protection of Privacy Act

MHA – Mental Health Act

OWA – Ontario Works Act

POA – Provincial Offences Act

SLRA – Succession Law Reform Act

SDA – Substitute Decisions Act, 1992

Th Act – Theatres Act

YOA – Young Offenders Act

YCJA – Youth Criminal Justice Act

6 & OVER

School attendance required [Ed Act, s. 21(1)]

7 & OVER

Consent to be adopted required [CFSA, s. 137(6)]

UNDER 12

Can be apprehended by CAS for serious criminal behaviour [CFSA, s. 37(2)(j) & (k)]

Can be the subject of a secure treatment order only with Minister’s consent [CFSA, s. 117(2)]

Cannot see a movie during school hours or after 7:30 p.m. unless accompanied by person apparently 16 years or older [Th Act, s. 19(1)]

12 & OVER

Can be prosecuted for provincial offences such as truancy [POA, s. 93(a)]

Can be charged with a criminal offense [YOA, s.2(1); YCJA s.2(1) as of April 1/03]

Consent of child required for voluntary care agreements with CAS and voluntary child protection proceedings [CFSA, s. 29(2)(b); s. 37(2)(l)]

Can consent on one’s own to counseling by service provider [CFSA, s. 28]

If in care, can apply to have status reviewed [CFSA, s. 64(4)(a)]

CAS wards can consent to access by person previously in charge of them [CFSA, s. 59]

Can be the subject of a secure treatment order [CFSA, s. 117]

Consent required to change name [CNA, s. 5(2)(c)]

14 & OVER

Can stop attending school or attend part time with parents’ consent and Board approval [Ed Act, s. 11(8), O.Reg 665/91]

Can reside with third party or non-custodial parent without criminal repercussion to the parent or third party [CCC ss.281,282 but see s. 280]

Can be transferred to adult court for prosecution of a criminal offense [YOA, s. 16(1); YCJA, s.62 as of April 1/03]

Can see “adult accompaniment” films without an adult [Th Act, s. 9, 19(3)]

Can consent to sexual activity except with a person in position of authority or trust [CCC, s. 150.1, 151, 152, 153(1)]

UNDER 16

Can be apprehended and taken to place of safety; and can be the subject of child protection proceedings [CFSA, s. 37(1); 40(2); and CLRA, s. 36]

Parents’ obligation to provide financial support is absolute and not dependant regardless of residence or why child left home [FLA, s. 31]

Deemed competent to appoint and instruct counsel in proceedings for admission into a psychiatric facility [MHA, s. 43]

Legal custodian may exercise child’s rights to privacy and access to information on child’s behalf [MFIPPA, s. 54(c)]

15

If 15th birthday is between first day of school and December 31st, can quit school at the end of that school year [Edu Act. s. 21(b)]

16 & OVER

Considered an adult under the POA [s.93(b)]

If 16th birthday is between January 1st and end of August, can quit school on 16th birthday [Ed Act, s. 21(a)]

Can work during school hours [Ed Act, s. 21]

Entitled to participate in decision identifying whether special needs student and subsequent placement, and in development of Individual Education Plan [Ed Act, O.Reg. 181/98, s. 5(1), s. 6(2)]

Can voluntarily withdraw from parental control but may lose right to parents' financial support [CFSA, s.43(2); CLRA, s.65; FLA, s.31]

Can no longer be apprehended by the CAS [CFSA, s. 37]

Can apply for secure treatment [CFSA, s. 114]

May apply to terminate wardship (CAS will NOT usually oppose) [CFSA, s.64]

Considered an adult for the purpose of the MHA [MHA, s.36.1, 36.2]

Can refuse emergency treatment [HCCA, s. 26]

Can be or appoint a substitute decision maker in medical treatment and personal care matters [HCCA, s. 33; SDA, s. 44]

Substitute decision maker must give effect to patient's treatment wishes made after patient turned 16 years [HCCA, s. 21]

Can marry with parents' consent, court order or Minister's permission [MA, s. 5(2), 6]

Can change name with parents' consent or court order [CNA, s. 4(3); (4)]

If single, entitled to social assistance in special circumstances [OWA, O. Reg. 491/01, s. 10]

Protected from discrimination based on age respecting housing [HRC, s. 4]

Eligible for novice driver's licence in graduated licensing scheme [HTA, s. 37(1); O.Reg. 67/02, s. 12(6)]

Right to privacy of and access to personal information on own behalf [MFIPPA, s. 54(c)]

UNDER 18

Parents may be civilly liable for damages caused by their minor children. Liability based on failing to supervise and depends on maturity of child [Common Law; AMAA, s. 1]

Litigation Guardian required to sue or be sued civilly unless court orders otherwise [Rules of Civil Procedure, R. 7.04 & AMAA, s. 1]

No statutory appeal or process rights under the Education Act [Ed Act, s. 1(2)]

If a student, entitled to reduced minimum wage [ESA, O.Reg. 285/01, s. 5(1)]

Can be sued on contracts for necessities (such as housing). May be sued on contracts for non-necessities if beneficial to the minor [Common Law]

Considered a "child" under the United Nations Convention on the Rights of the Child [Article 1]

18 & OVER

Age of majority - ceases being a minor [AMAA, s. 1]

Considered an adult under the CCC (no longer a "young person" under the YOA and YCJA as of April 1/03) [YOJA, s. 2(1); YCJA, s. 2(1)]

Can sue or be sued in their own name as no longer a minor under Rule 7.04 [AMAA, s. 1]

Eligible to vote [Election Act, s.15(1)]

"Adult" for the purposes of the Ed Act [s. 1(2)]

Protection from age discrimination [HRC, s. 10]

Can appoint or be a substitute decision maker with respect to property matters [SDA, s. 4, 5]

Cannot be the subject of child protection orders. Existing orders terminate unless extended by CAS [CFSA, s. 71]

Can no longer be the subject of custody or access orders [CLRA, s. 18(2)]

Parents obligation to provide financial support ceases, unless in school full time [FLA, s. 31(1)]

Eligible for social assistance, if in need [OWA]

Entitled to earn full minimum wage [ESA, O.Reg. 285/01, s.5(1)]

Can enter into contracts [Common Law]

Can make a will, [SLRA, s. 8]

Can change name [CNA, s. 1; 4(3)]

Can see a restricted movie [Th Act, s. 19(4)]

Can marry without permission [MA, s.5]

19 & OVER

Can consume alcohol [Liquor License Act, s. 30(1)]

Can purchase tobacco [Tobacco Control Act, s. 3]

Eligible for GST refund credit [ITA]

NON AGE - BASED MILESTONES

Pupils of any age can see their school records [Ed Act, s. 266(3)]

Entitlement to attend school depends on residence of parent or

tenancy of pupil in school board area [Ed Act, s. 36]

Consent to medical treatment depends on mental capacity not age [HCCA]

Federal HRC and Charter protect all ages from age discrimination [Canadian Human Rights Act, Charter]

Single parents of any age are eligible for social assistance, if needed [OWA]

Parents or married persons of any age are eligible to claim GST refund credit [ITA]

Married persons or those in the military can make a will at any age [SLRA, s. 8]

Civil liability of minors depends on maturity not age (no known case ascribing liability to a child of "tender years" i.e. under 6 years) [Common Law]

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Annual General Meeting

YOU ARE INVITED TO THE 24TH JFCY ANNUAL GENERAL MEETING

TUESDAY, OCTOBER 8, 2002 – 6:00 P.M.

AT

ST.ANDREW'S CHURCH

73 SIMCOE ST. (corner of King St. & Simcoe)

Guest Speakers - Voices of Youth

Business Meeting: Election of the Board of Directors (5 positions); Auditors' report; Financial report; and other business

REFRESHMENTS WILL BE PROVIDED BY CENTRAL TECH COLLEGIATE STUDENTS

SO COME ALONG, AND BRING ANYONE WHO MIGHT BE INTERESTED!

Series on THE HISTORIC STATUS OF CHILDREN

Roman Law 2nd century A.D.

The jurist Gaius (family name unknown) was an active law teacher and an influential jurist in 2nd century Rome. His *Institutes*, was the basis for Justinian's *Institutes*, which had a tremendous influence on European legal education.

The head of the family has children in his power, he is allowed to appoint guardians for them by will. That is, for males while under puberty but for females however old they are, even when they are married. For it was the wish of the old lawyers that women, even those of full age, should be in guardianship as being scatterbrained. And so if someone appoints a guardian in his will for his son and his daughter and both of them reach puberty, the son ceases to have a guardian but the daughter still continues in guardianship. (ed. note: the practice of guardianship for women ceased in the 4th century)*

**What We Do
UNDER 18 ?
HAVE A LEGAL QUESTION ?
CALL JUSTICE FOR CHILDREN AND YOUTH !**

Justice for Children and Youth aims to assist and empower children and youth in obtaining fair and equal access to legal, educational, medical, and social resources. We provide legal representation to low-income children and youth in Toronto and vicinity. We are a non-profit legal aid clinic that specializes in protecting the rights of those facing conflict with the legal system, education, social service or mental health systems. We give summary legal advice, information, and assistance to young people, parents (in education matters), professionals and community groups across Ontario.

JFCY lawyers may be able to help you if you have questions about the following:

Child Welfare: We advise and represent youth who want into or out of Children's Aid care or who have questions or concerns about their placement or program while in care.

Consent To Treatment: We give legal advice to young persons and care providers regarding the right to consent to and refuse treatment. We will assist a young person who is having trouble getting OHIP.

Education Law: We help young people who are not living with a parent get enrolled in school. We help children and parents obtain appropriate special education placements. We represent low income children and youth who have been suspended and excluded from school or who face expulsion from a board. We also give advice about truancy, records and privacy issues.

Leaving Home: We provide summary advice and representation, when necessary, for young people who have left or are considering leaving their parents' home. We also assist in the recovery of personal possessions being withheld by a parent when a young person leaves home.

Social Assistance: We represent youth aged 16 and 17 who are trying to get general welfare assistance or who have been cut off. We give summary advice to persons seeking the foster parent benefit and to young parents applying for family benefits.

Support: We provide summary advice to young persons where they are seeking financial support from their parents. The youth should be able to get legal aid. In this regard, we assist youth living independently and not youth living with a parent.

Victims of Crime: We represent young persons who wish to protect the privacy of personal records in criminal proceedings. We also help young people make claims before the Criminal Injuries Compensation Board.

Young Offenders: We help young people in trouble with the law by giving them information about the legal system and their rights. We help them find lawyers and refer them to other resources.

We will try to do our best to help out any young person who calls us. We usually know who can help them if we can't. If the matter does not appear on this list, you can call us to find out whether we can assist.

**GTA: 416-920-1633 GTA
Elsewhere in Ontario: 1-866-999-JFCY (5329)
www.jfcy.org**

Reflections of Law Students at JFCY

J. Andres Hannah-Suarez (2nd year University of Toronto)

I started my summer work at Justice for Children and Youth in mid-June, and have been involved in a wide variety of projects. I started by working on updating the Legal Milestones for Youth document—a sort of baptism by fire, as I had previously limited experience in wading through legislation. Furthermore, it was a rough start, as on my first day, all of the Internet servers for the Government of Ontario were down for several hours. As such, I made a dismal attempt at finding the numerous acts and regulations by hand... not altogether successful!

Over the summer I was exposed to challenging legal projects, and thanks to the help of many staff lawyers at JFCY, I managed to accomplish the tasks expected of me. I worked on a chapter for a book on issues of privacy and access to information conducted research for an Education law case at the Ontario Court of Appeal; and helped out with client intake. I also had to opportunity to visit youth court, and attended a school board hearing with a staff lawyer.

My experience at JFCY has been memorable, and given me valuable exposure to the legal issues facing youth in Ontario.

Jen Cavanagh (3rd year, University of Toronto)

The University of Toronto Faculty of Law claims higher tuition corresponds to a better education. My summer at JFCY would prove otherwise.

I didn't pay a cent for my "education" this summer. I have learned more about Education law and the youth criminal justice system this summer at JFCY than I could have in any classroom. I worked on an Education law manual, did research for the lawyers, worked with youth facing legal issues, and spent afternoons observing at 311 Jarvis. It all added up to a diverse and intense learning experience. Plus I learned from the best teachers. The lawyers and staff at JFCY are truly dedicated to their clients and very knowledgeable about the areas of law that they deal with every day. Not only are they lawyers, they are also teachers, social workers, idealists, and parents. These qualifications make for excellent professors. I got great answers to my questions and advice on everything under the sun, all for free. The only down side is that none of this was for credit.

Mona Shah (3rd year University of Toronto)

As a participant in the Public Advocacy Program at U of T. I spent the last 7 weeks of the summer at JFCY. My primary task was to read, analyze, and critique Canada's Second Report to the United Nations Committee on the Rights of the Child, on its compliance with the *U.N. Convention on the Rights of the Child*.

While on the whole Canada does appear to comply with the *Convention*, there are several areas where it fails to comply. One of the areas which is of particular interest to JFCY, is that Canada continues to accept Corporal Punishment under section 43 of the *Criminal Code*.

A further example of Canada's failure to comply, and one in which JFCY is intervening, is represented in the case *Minister of Citizenship and Immigration v. Daphney Hawthorne*. This case illustrates the government's continuing failure to take into account the best interests of the child, contrary to the *Convention*, when determining whether to deport parents of minor children.

Executive Director's Message cont'd

constitutionally educate a child without infusing the entire curriculum with religious values. For one person, auto mechanics is not education; it is training which should be financed by employers. For another, English Literature is not education; it is just airy faerie opinions that won't get students jobs. For one person, an aide providing personal services and regular attention from a nurse or speech pathologist or youth behavioural worker are part of education. For others, those costs should not be borne by the education taxpayer. For some people, education should teach patriotism and support for the decisions of democratic government. For others, questioning of all views, whether those of the government or those of a small minority, is the lifelong goal of education. As Robert M. Hutchins has said: The object of education is to prepare the young to educate themselves throughout their lives. And: My idea of education is to unsettle the minds of the young and to inflame their intellects.

Does law have a role to play in what seems like a political or philosophical debate? Certainly the issues are not debated only at the ballot box. Political protest appears to be on the rise. In response, the criminal law is used to control protest more vigorously each year. Using more conventional legal means, a group of parents have retained a lawyer to seek judicial review of the Minister's decision to appoint a supervisor in Ottawa. And, refusing to leave educational funding policy decisions to the Ministry of Education, Ontario's Human Rights Commissioner has expressed concern about the number of complaints being filed that relate to the inadequacy of special education

services. As a result, the Commission, which had generally refused to take complaints about special education, leaving such disputes to a Special Education Tribunal process prescribed by the Education Act, is now proactively engaged in the consideration of what education is for students with disabilities; the Commissioner is beginning a series of public consultations this fall. And a class action is proceeding in Ontario against the Province for failing to provide appropriate educational programs for children with autism. At JFCY we are involved in many disputes between school boards and special needs children. At the present we are representing a child in an Ontario Human Rights complaint concerning what kinds of services for disabled children fall within the responsibility of the teachers and/or aids. When challenged about the cuts to education, the Ontario government says it is spending more every year, even if less per student, that it is keeping its promises and being accountable, even though its current decisions are extremely unpopular according to pollsters.

Who should decide what education is, in Ontario and across the country? Taxpayers? Parents? Educators? Appointed supervisors? Elected trustees? Consumers of the system (students)? Provincial legislators? Provincial bureaucrats? Lawyers and judges?

The decisions made or victories won by any one of these groups leads to objections to the power of “special interest groups”, repeated teacher strikes and an increasingly divided public.

One final thought from Derek Bok: If you think education is expensive, try ignorance.

out of office experiences

In addition to organizing and participating in various in-house committees, our staff represents Justice for Children and Youth on committees throughout the community at large, here is a sample of some of those:

Martha Mackinnon:

President of C.A.P.S.L.E. (Canadian Association for Practical Study of Law in Education; Executive Education Section –Ontario Bar Association; Continuing Legal Education –Ontario Bar Association; Council of Ontario Bar Association; Management Training Committee Legal Aid Ontario; Board of Directors H.A.L.C.O.

Cheryl Milne:

Executive of Ontario Bar Association Constitutional & Civil Liberties Section; Limbo Task Force of Sparrow Lake Alliance; Inter University Working Group on Section 43; Education Rights Task Force

Lee Ann Chapman

Toronto District School Board Community Equity Reference Group; Metro Toronto Youth Safety Committee; Education Rights Task Force; Children’s Right to OHIP Community Coalition

Naomi Johnson

Toronto Police Accountability Coalition; Committee to Stop Targeted Policing; Interclinic Immigration Working Group; Board Member of Prisoner’s HIV/AIDS Support Action Network

Sara Copely

Supporting Our Youth; Ontario Project for Inter-Community Organizing; Committee to Stop Targeted Policing

Announcements

WELCOME!!

From India - lawyer **Randhir Batsa**, who will be with us through November 2002. Mr. Batsa is the co-ordinator of projects for the SOUTH ASIAN COALITION ON CHILD SERVITUDE.

Thanks to Canadian Crossroads for arranging the exchange, we look forward to Mr. Batsa's stay at JFCY.

THANKS, FAREWELL & GOOD LUCK!

Le Huong Truong, our support staff worker who is entering first year at University of Toronto Law School.

MANY Thanks and Goodbye!!!

to students:

J. Andres Hannah-Suarez: U of T

Mona Shah: U of T

Jennifer Cavanagh: U of T

Melinda Gayda: Osgoode

Guillaume Tremblay: Exchange Student

WELCOME!

From Ryerson College – social work student **Reegan Murdock**

From Osgoode Hall Law School

Jonathan Lau

WITH GRATITUDE!

to **BLAKE CASSELS & GRAYDON** for allowing articling students **Nick Adamson and Mike McGraw** to donate their legal talents to our clinic
Thanks and good luck Nick & Mike!

*2002/03 CONSOLIDATION OF THE
EDUCATION STATUTES &
REGULATIONS HAS BEEN RELEASED*
**CHERYL MILNE & MARTHA
MACKINNON CO-EDITORS**

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:

RUSSELL VAUGHAN who for health reasons stepped down as
Treasurer of the Board of JFCY

& to

ANDREW STEWART for agreeing to step in to fill the position.

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 |

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
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