

Youth Leaving Care Hearings
JFCY Submission

October 14, 2011

Justice for Children and Youth (JFCY) is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. Since 1978, the clinic has provided select legal representation to Ontario youth aged 17 and under in the areas of child welfare, criminal law, constitutional law, human rights, education law, family law, mental health law, health law and income maintenance.

JFCY prepares policy positions on issues relating to the legal practice of the clinic based on the needs of and experiences of its clients. JFCY also conducts test case litigation, through interventions and applications, on specific issues relating to the rights of children and youth. The clinic provides public legal education to youth and youth-serving agencies and has created numerous publications for young people.

JFCY operates the Street Youth Legal Services Program (SYLS). Since 1999, the program has directly assisted over 5,000 street involved youth on a wide range of legal matters, provided legal education to more than 10,000 street youth and street-youth-serving agency staff, and taken part or led major advocacy projects such as a constitutional challenge to the *Safe Streets Act* law that restricts begging.

The number of street involved and homeless youth in Ontario has dramatically increased over the past thirty years. While the population of Greater Toronto Area (GTA) has doubled since 1980, the number of homeless youth shelter beds in Toronto responding to the needs of homeless youth, has increased by at least 400%. This disproportionate increase in the need for emergency services for homeless youth raises serious concerns about the safety and security of our youth. In addition to homeless young people staying at shelters, housing advocates and service providers estimate non-shelter-using homeless youth, such as couch surfers and those living on the streets, represent 80% of the total population of homeless youth. Covenant House, Canada's largest youth shelter, estimates there are 1,500-2000 homeless youth in the GTA alone on any given night.

The range of multi-layered legal problems each street-involved or homeless young person faces is often very broad. Underlying and compounding these problems is the basic lack of options available to homeless youth to achieve or maintain well-being and personal security in housing, education, health, and finances. Many youth are unable to access any child welfare services because they have “aged out” or they have left care and are not permitted to access services again. The process for obtaining and remaining supported through basic social assistance is more onerous for youth as compared to adults, and the financial support available to youth is not enough to provide suitable shelter, nutrition, and clothing.

A staggering number of homeless youth have previously been in care. Research finds that 30% to 50% of all homeless youth in Canada have been involved in child protection services during their lives.¹ The 2005 Laidlaw Report Briefing ‘Youth Aging Out of Care - How Do They Fare?’ found that 43% of homeless youth had previously been in the care of a Children’s Aid Society and had already been found to be in need of protection.² It follows logically that we have failed these young people – we have not provided them with protective services sufficient to ensure they are housed. Child welfare reform is therefore essential to prevent or reduce youth homelessness.

It is the absence of legal tools to assist homeless young people attain security (economic, housing, nutrition, education), matched with the trends in demographics amongst homeless youth that leads JFCY and SYLS to strongly recommend law and policy reform to prevent and reduce youth homelessness.

The Current Situation

Our current child welfare legislation does not provide Children’s Aid Societies with the appropriate tools or resources to support youth developing independence to become

¹ Raising the Roof, Youth Homelessness In Canada: The Road to Solutions (Toronto: 2009).

² Anne Tweedle, Youth Aging Out of Care - How Do They Fare? (Toronto: Laidlaw Foundation Report Briefing, 2005).

successful adults. Previous *Child and Family Services Act*³ (*CFSA*) amendments have represented positive steps forward, allowing for greater support to be offered to youth in need. The recent *CFSA* amendments allow Crown wards to access extended care agreements even if they were not receiving services when they were age 16 and 17. These amendments further allow a youth who withdraws from an agreement to resume the agreement. However, the decision-making power rests solely with a Children's Aid Society. A Society is given full discretion in deciding whether or not to permit extended maintenance. A young person who has chosen to stop receiving extended care and maintenance on one occasion may choose to resume receiving it; but if they have chosen to stop receiving extended care and maintenance on more than one occasion then it is only at "the discretion of the society or agency providing the care or maintenance" that it can be resumed for a second time. These amendments have not gone far enough to meet the core needs of children whose age and developmental stage make it difficult for them to make wise and consistent choices, and who ought to have a right to access our child welfare system.

Children who have been found to be in need of protection must be treated as well by their State parent as they would be by good parents in a family setting. They must be encouraged to develop the skills needed for successful independent living; they must be welcomed back when their attempts to be independent fail; they must be accepted and supported even when their behaviours are challenging.

We propose a more flexible model of care for older youth that provides for a mandatory state obligation to provide support into early adulthood with young people having the discretion to accept or reject the support.

³ Ontario's governing child welfare legislation is the *Child and Family Services Act (CFSA)*, R.S.O. 1990, c. C. 11 <http://www.canlii.org/en/on/laws/stat/rso-1990-c-c11/latest/rso-1990-c-c11.html>

Recommendation # 1: The definition of a child for the purposes of being found in need of protection should include all children less than 18 years of age. Children and youth aged 16 and 17 should be allowed to enter care for the first time up until their 18th birthday but services should be provided to 16 and 17 year olds only with their consent.

Justice for Children and Youth supports age 18 as the age limit for finding a child to be in need of protection. The United Nations *Convention on the Rights of the Child* (“*Convention*”) defines child as being under 18 years of age. The requirement that children be protected from all forms of violence, abuse and neglect extends to all children, not just those under the age of 16. Ontario has ratified the *Convention* with respect to matters within provincial jurisdiction. Compliance with the *Convention* requires that 16 and 17 year olds be offered the benefits of the child welfare system. Although we do not support coercive or mandatory child welfare involvement with young people aged 16 and 17, services must be made available to them. Many young people in this age group are living in or have left abusive home situations and have no place to turn to for support. While children may leave home (including a Society-provided home) at 16, they are entitled to support at least until 18 or they have finished school. Children in need of protection deserve no less.

Recommendation #2: If children have experienced 13 weeks in total in care at any time or times during their childhood or youth, then they should have a right to access extended care and maintenance.

Ontario, through its children’s aid societies, has an on-going obligation to the young people it apprehends and takes into care. Unless a child is adopted or has parents whose lives change enough to provide long-term good parenting, Ontario should continue to support the young people it has taken from their families.⁴ Extended care and maintenance options should be available for youth who have experienced 13 weeks in total in care at any time or times during their childhood or youth regardless of whether not they were made a Crown ward by the Courts.

⁴ See for example *Children Act, 1989* (U.K.) c. 41, s. 22, 23 & 24, where extended care is made available to young people up to the age of 24 provided they are in an approved program of education.

Young persons who were or continue to be abused at home should not be required to fend for themselves financially. Some, dealing with the after effects of abuse, are not ready to live without adult supervision; others, who try to live as adults must either quit school and find an unskilled job or must meet stringent social assistance qualifications including an absolute requirement relating to school attendance. A child from an abusive home may well have attendance problems at school that disqualify the child from social assistance, but which are in fact, merely further evidence that the child needs the state's care and protection. It may be at the very time that youth are able to say 'no' to the abuse or neglect they suffer, or begin to experience hardships based on discrimination or mental health concerns, that our child welfare system too often fails them.

Crown wards represent approximately 60% of the 18,000 youth currently in care⁵, and they are currently the only children receiving services from a Society who are able to access extended care and maintenance. In effect, 40% of children for whom there is a sufficient level of concern to merit Society involvement have no legal entitlement to on-going support into their young adulthood. Permitting flexibility and a right of access to all youth who had been in care for a certain amount of time would be an important first step to reducing homelessness.

Recommendation #3: The Regulations for extended care past age 18 should permit support until the age of 24 years or until the young person has completed post-secondary education.

In addition to extended care and maintenance being offered to all youth who have been in care for over 13 weeks, JFCY recommends that youth receiving extended care and maintenance be provided with support until the age of 24. Currently these agreements stop when they reach age 21. Canadian youth, on average, now leave home at age 27.⁶ Most youth have not completed post-secondary education by age 21. A young person who has

⁵ John Stapleton & Anne Tweddle, A Report on the Complex Array of Income Security Programs and Educational Planning for Children in Care in Ontario': 2010, Open Policy Ontario, Laidlaw Foundation.

⁶ Office of the Provincial Advocate for Children and Youth, Presentation to: Service Manager Housing Network, March 25, 2011.

been in care and has experienced set backs or trauma may take much longer to start and finish schooling achievements. Young people in care should be provided with support at least as far-reaching as children who have not been found in need of protection, especially in light of the increased needs of youth in care.

Extending support to young people beyond 16, 18 or 21 would save tax dollars. The following estimates of financial burden on tax payers set out the costs of the emergency response to youth homelessness:

\$2,500 - cost of providing a youth with emergency shelter for one month
 \$8,000 - cost of incarcerating a youth for one month
 \$4,500 - monthly cost of support services to a homeless person provided by the police, health care, and other community supports

Total – between \$6,500 and \$8,000 in costs per homeless youth per month⁷

In comparison, costs of income supplements or supportive housing arrangements, including a community support worker for youth, are found to be much less costly, as low as \$1,000 per month.⁸

Recommendation #4: The Regulations for continuing care past age 18 should provide youth with a right to re-enter care after withdrawing.

Though the recent *CFSA* amendments authorize a society to permit a youth to re-enter an extended care agreement, young people themselves do not have the right to demand such agreements. JFCY submits that children's aid societies have a continuing obligation of support and care to a young person who was in care – and that this duty cannot be extinguished by the Society. The Regulations ought to reflect young people's

⁷ Sylvia Novac et al, *Justice and Injustice: Homelessness, Crime, Victimization and the Criminal Justice System* (Toronto: Centre for Urban & Community Studies, University of Toronto, 2006) at 23.

⁸ Gloria Gallant, Joyce Brown & Jacques Tremblay, *From Tent City to Housing: An Evaluation of The City of Toronto's Emergency Homelessness Pilot Project* (Toronto: City of Toronto, 2004).

right to continued care, even if they withdraw from care more than one time, just as children in families may leave home and return several times before achieving successful independence.

Recommendation #5: The *Child and Family Services Act* should include a preamble or statement of principles that specifically incorporates the United Nations *Convention on the Rights of the Child*.

Justice for Children and Youth recommends that the *CFSA* include a preamble or statement of principles that makes specific reference to the United Nations *Convention on the Rights of the Child* (“*Convention*”). Any review of the legislation, and any amendments proposed, should take into account Canada’s and Ontario’s obligations to comply with the *Convention*. This was done in the *Youth Criminal Justice Act*. Child welfare legislation ought to be at least as attentive to Ontario’s international legal obligations to young people.

Recommendation #6: The Regulations of the forthcoming *Housing Services Act* should expressly give priority for affordable housing services to youth leaving care.

Ontario’s forthcoming *Housing Services Act* has the capacity to support a more robust extended care and maintenance arrangement for youth in need. Its regulations should prescribe additional housing resources and age-appropriate housing opportunities for older adolescents. It is a tragic irony that there is effectively no social housing for young people since they are no longer young when they reach the top of the wait list. It is also counterproductive, since the longer a young person is homeless, the harder it is to break the connection to homeless street life.

Recommendation #7: Proclaim in Force the Access to Information sections 180-182 of the CFSA.

The confidentiality and access to information provisions currently in force in the legislation have never been proclaimed in force. As a result of this lack of legislative requirements, children's aid societies have developed their own policies around disclosure of information. The problem for young people is that there is no sense that they have any right to access vital information about themselves. A request by a young person to see their file is answered by a letter in which a social worker has reviewed the file and determined what the young person should know. Often lawyers are permitted to review the file on behalf of a client, but not every young person can or should have to retain a lawyer to access personal information. All other public bodies in this province are required to meet legislated standards for the protection of personal information and for the release of such information to those to whom it relates.

In order to feel prepared for independence and a future, young people must have access to their past and their personal information.

Security of the Person for young people

The nature and quality of services that children who have been found in need of protection receive from child welfare authorities as they transition to adulthood, and the lived realities of the many children who remain excluded from the care system by virtue of their age, may leave the current child welfare system in Ontario vulnerable to challenge pursuant to both the *Convention* and the *Canadian Charter of Rights and Freedoms (Charter)* under sections 7 and 15, the rights to life liberty and security of the person, and the right to equality.

Under the *Charter*, the state removal of a child from their family has been seen to engage s. 7, that is, a right to "security of the person" which can only be infringed in accordance with the principles of fundamental justice.

The Supreme Court of Canada case *New Brunswick (Minister of Health and Community Services) v. G.(J.)* concluded that where a certain ruling in a child protection proceeding impeded a parent from effectively participating in a hearing, it infringed her and her children's *Charter* rights respecting the security of the person. In the ruling, the Chief Justice describes the importance of a parents' right to security of the person in the context of a child protection hearing:

"The interests at stake in the custody hearing are unquestionably of the highest order. Few state actions can have a more profound effect on the lives of both parent and child. Not only is the parent's right to security of the person at stake, the child's is as well..." (emphasis added)

New Brunswick (Minister of Health and Community Services) v. G.(J.)
[J.G.]: [\[1999\] 3 S.C.R. 46](#), para. 76.

The Supreme Court of Canada's assertion that a child's right to security of the person is engaged during child protection hearings may require that the state offer certain procedural legal rights founded within our principles of fundamental justice that are not currently provided. For example, vulnerable 16 and 17 year olds who request and are not offered child protection services in the absence of a judicial determination or reasons may assert that their s. 7 rights are being infringed. Similarly they may argue that they are the victims of age discrimination.

Conclusion – We need Reform to Break the Cycle

With the increasing rates of youth homelessness and disproportionate number of youth leaving care becoming homeless, reliance on an "emergency response" approach to homelessness, rather than implementing planned social supports and prevention strategies, is accelerating a cycle of homelessness and poverty. This consultation process should highlight needed reforms that create flexibility and opportunity for youth in need at crucial periods of their life – and specifically as they transition to adulthood. As a first step, JFCY

urges the government of Ontario to adopt substantial reform to the *Child and Family Services Act* and Regulations to stop the cycle of youth homelessness and instability.

SUMMARY OF RECOMMENDATIONS:

- 1. The definition of a child for the purposes of being found in need of protection should include all children less than 18 years of age. Children and youth aged 16 and 17 should be allowed to enter care for the first time up until their 18th birthday but services should be provided to 16 and 17 year olds only with their consent.**
- 2. If children have experienced 13 weeks in total in care at any time or times during their childhood or youth, then they should have a right to access extended care and maintenance.**
- 3. The Regulations for extended care past age 18 should permit support until the age of 24 years or until the young person has completed post-secondary education.**
- 4. The Regulations for continuing care past age 18 should provide youth with a right to re-enter care after withdrawing.**
- 5. The *Child and Family Services Act* should include a preamble or statement of principles that specifically incorporates the United Nations *Convention on the Rights of the Child*.**
- 6. The Regulations of Ontario's forthcoming *Housing Services Act*⁹ should provide that affordable housing services for youth leaving care are a priority.**
- 7. Proclaim in Force the Access to Information sections 180-182 of the CFSA.**

⁹ Ontario's Bill 140 'Strong Communities through Affordable Housing Act' will come into force in January 2012. The new *Housing Services Act* will be enacted and the *Social Housing Reform Act* will be repealed. <http://www.canlii.org/en/on/laws/stat/so-2011-c-6-sch-1/latest/so-2011-c-6-sch-1.html>