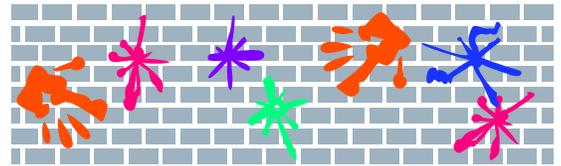


Canadian Foundation for Children Youth and the Law
Legal Assistance for Young People: Justice, Empowerment, Voice

This newsletter features information on JFCY and updates on Children's Rights.
For more information, please visit our website at www.jfcy.org

PRESIDENT'S MESSAGE

Stephen Lamont



Get Involved

As we approach a provincial election and a possible federal election I would ask everyone to think about the impact on our youngest and most vulnerable population.

Young people are often vilified in the media and therefore become easy targets for draconian responses by politicians hoping to win voter support. Even as statistics show youth crime rates dropping, the media focuses on a few tragic events as an indication of increasing crime rates and gang involvement. Many politicians are quick to respond with "get tough" solutions such as adult sentences for young people, and criminally charging children as young as 10 years old. The *Safe Schools Act*, based on the philosophy of zero tolerance, was similarly a knee-jerk response to the inaccurate

perceptions that young people's behaviours were out of control and schools very unsafe. What seemed like an easy solution turned out to be disastrous, especially for students with special needs and racialized students.

However, few political parties respond effectively to the demands for a significant reduction in our shameful rates of child poverty, and more programs for youth, both of which have been consistently shown the most effective ways to address youth crime. As people concerned about children and youth, we need to carefully examine what each party has to offer in the way of productive solutions for addressing the needs of this vulnerable population who do not have the opportunity to vote themselves. On their behalf, we should ask all candidates in our ridings

what they intend to do to help address the root causes of problems which young people face.

In closing, let me take this opportunity to invite all of you to take an active part in the work of Justice for Children and Youth by joining one of our volunteer committees. We value our members' diverse backgrounds and skills, which can only enrich our Clinic. The Policy Committee, Youth Action Committee (YAC) and Community Development Committee can all benefit from your involvement.

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Back to School—A New Year

Thoughts from the Executive Director

By Martha Mackinnon



September always feels like the beginning of a new year. The advertising flyers are full of “Back to School” clothing and notebooks. There is (usually) crispness in the air or at least cooler nights for better sleeping that gives renewed energy. And many people call Justice for Children and Youth with education issues. Some are issues that could have been dealt with more effortlessly in May or June, but the student is also now filled with renewed vigour. Others arise out of new circumstances or a recent move.

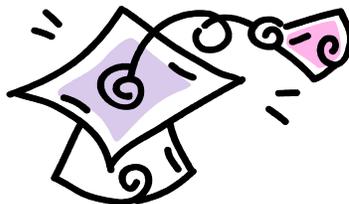
This fall has held other types of new beginnings at Justice for Children and Youth. Although it seems far in the future, the clinic has finally won a Legal Aid Ontario lottery of a sort. For one year, beginning next May, we will be able to offer a position to an articling student. By convention, law students apply for these jobs after second year law school. We posted our position in August and have been very gratified by both the number and quality of applicants. I wish only that we had more positions to offer! We have also received a grant from The Law Foundation to help us pay for the services of a specialist in raising funds through proposals to foundations and special events. This has made us more optimistic about our ability to raise on-going funds for our Street Youth Legal Services (SYLS) program, and getting more support for our Youth Action Committee (neither of which are funded by Legal Aid Ontario through our core operational funding. Again we met some outstanding people committed to helping non-profit organizations do their work. Finally, our Administrative Assistant, Gloria Dang, returned to university full time so we have been looking to replace her.

The board of directors has also been working with renewed energy on a fundraising event on October 24th at Hugh’s Room in Toronto. See “What’s New” on our website for more information.

This September is the beginning of an amended “safe schools” regime. Things should be better for students from racialized communities, students with disabilities and all students who are suspended for more than 5 days. A widespread perception that the previous “zero tolerance” regime had a disproportionate impact on the two former groups was described by the Ontario Human Rights Commission and led to a complaint against the Ministry of Education. The complaint has now been settled and amendments to the *Education Act*, its Regulations and new Program Policy Memoranda (PPMs) issued by the Ministry to all school boards are in place to improve school discipline for particularly vulnerable students. The Province’s consultation process on the previous “Safe Schools Regime” revealed two other problems. Students who were suspended fell behind in their academic process and were unable to catch up on their return to school, creating continuing difficulties for the teachers, other students and the returning students themselves. It is now expected that students who are suspended for more than 5 days will receive an education program. As well, many students were “excluded” from their schools without any ability to appeal or question the decision of the principal. That will legally end by February, 2008. We should all be vigilant in monitoring how our schools implement these changes to ensure we do not perpetuate a lost, uneducated generation. Happy New Year!

Board of Directors

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Education Act Amendments on School Discipline Effective Feb 1 2008

1. Principals may no longer expel students; all expulsions must be referred to the school board for a hearing before trustees.
2. NO expulsions from all the schools in Ontario. There are two types of expulsions-the first from the home school only, the second from all the schools in the school board.
3. No teacher suspensions; only principals can suspend students.
4. The person appealing must give written notice to a designated supervisory officer to appeal a suspension within 10 days of start of the suspension. The school board must hear the appeal within 15 days of the notice.
5. All students suspended for more than 5 days, as well as students who are expelled from all schools in the school board, must be assigned to a program.
6. Students expelled from their home school only, must be assigned to another school not just given a program. The principal has input on whether there is a particular school which will benefit the student.
7. School boards are required to re-admit students after they have completed the expulsion program.
8. There are still listed behaviours (including bullying) for possible suspensions, mandatory suspensions, and possible expulsions. However, the principal and/or school board must take mitigating factors into account before deciding to suspend or expel.
9. Offending behaviour “which affects school climate”, can be grounds for discipline (formerly “behaviour which affected school or school activities”).
10. The pupil (as well as the parent) gets notice of the suspension/expulsion and a copy of the principal’s report.
11. Expulsion hearings must be heard by at least three members of the school board.
12. Written notice of expulsion and reasons must be sent to all the parties and the pupil, if the student was not a party.
13. All expulsions can be appealed to the Child and Family Services Review Board.
14. A student can re-apply to return to the home school after the expulsion is completed.
15. Only one suspension is allowed per occurrence.
16. A student remains a student of the board while attending a program.
17. Students who are suspended pending possible expulsion cannot appeal the suspension until the principal has made the decision on whether to refer the matter for an expulsion.

18. If the Board decides not to expel the student, they must send the matter back to the principal to decide whether to confirm the suspension. If the principal does confirm, then there must be a second appeal, this time of the suspension.
19. A new Policy Program Memorandum clarifies that students cannot be excluded from their home school under section 305 (“safe schools transfers”). However, schools can exclude students under section 265. (There is a right to appeal to the school board under section 265, unlike 305)



Children: The Silenced Citizens *

[Raynell Andreychuk, Senator](#)

Canada took a leadership role in drafting the United Nations *Convention on the Rights of the Child* and in encouraging widespread adherence. The Convention took its final form in 1989 and Canada ratified in 1991. *The Convention* is the first legally binding international instrument to describe civil, cultural, economic, political and social rights specifically for children.

In 2004, the Senate Committee on Human Rights began a study on the rights of children. Over the next three years the Committee heard eye-opening testimony about Canadian children and youth whose futures were at risk. We heard stories about children who were being subjected to violence, who were being exploited sexually, who were tangled in the justice system, children with disabilities who were not receiving the services they

need to grow into their full potential. We heard about immigrant children who were separated from their families and about children who were forced by the system to be on their own just when they were starting to put their troubled lives back together.

The Convention could be a useful mechanism for these children. It protects children's rights by setting standards in health care; education; and legal, civil and social services. International human rights treaties are rarely incorporated directly into Canadian law, but are indirectly implemented by ensuring that pre-existing legislation is in conformity with the obligations accepted in a particular convention. Parliament plays no role in ratification, thus international human rights treaties that are not directly incorporated into domestic legislation bypass the

parliamentary process. Implementation of international law where provincial laws and policies are affected is the responsibility of the federal, provincial and territorial governments.

Numerous witnesses expressed concern about the lack of awareness in government, in Parliament, and among the public, of the *Convention on the Rights of the Child* and the rights enshrined in it. Throughout our hearings, we became aware that there is very little knowledge of the *Convention* outside academic and advocacy circles. Canada does report to the UN Committee on the Rights of the Child and receives that Committee's Concluding Observations, but there is little follow-up.

continued...

In government, even among those dedicated to protecting children's rights, knowledge of the nearly 20-year-old *Convention* is spotty at best. The Committee has discovered that some government officials working towards the protection of children's rights seem to operate in ignorance of the international tool at their disposal. In many respects, the *Convention* is simply not used as a means or a framework to protect children's rights. In its Report tabled on April 26, 2007, the Committee found that the federal government's approach to compliance with children's rights, and with the *Convention* in particular, is inadequate. Jurisdictional complexities, the absence of effective institutions, an uncertain approach to human rights law, and lack of transparency and political involvement indicate that the *Convention* is being ineffectively applied in the Canadian context.

To push both the issue and respect for the democratic process further, we need enhanced accountability, increased parliamentary and public input, and a more open approach to compliance that promotes transparency and enhanced political will.

The UN *Convention on the Rights of the Child* is not solidly embedded in Canadian law, in policy, or in the national psyche. Governments and courts use it only as a strongly worded guiding principle with which they attempt to ensure that laws conform, rather than acting as if they are bound by it.

No body is in charge of ensuring that the *Convention* is effectively implemented in Canada, and the political will is lacking. Implementation is the key to making the *Convention* work. For Canada to claim that it fully respects the rights and freedoms of its children and to remain a human rights leader in the international sphere, it must improve its level of actual compliance. The government needs to take the lead with respect to implementation of the *Convention*.

The Committee proposed measures to guarantee systematic monitoring of the *Convention's* implementation in order to ensure effective compliance. In order to comply with the UN *Convention*, Canada must establish a Children's Commissioner and ensure greater coordination of children's issues at the federal level through a Federal Interdepartmental Working Group for Children.

The Committee also emphasized the need for awareness-raising with respect to both the *Convention* and the rights-based approach embedded within it. Most importantly, through its recommendations, the Committee sought to strengthen the active involvement of children in all institutions and processes affecting their rights. Children's voices rarely inform government decisions, yet they are one of the groups most affected by government action or inaction. Children are not merely underrepresented; they are almost not represented at all. Our Committee strongly believes that children should be

meaningfully consulted on all significant issues affecting their rights and lives.

The child's right to participate and to be heard is an important political right - it is one of the most fundamental principles underlying the *Convention on the Rights of the Child*. Our Committee heard over and over again how children and youth feel that they are not consulted or that their views are discounted, often on matters that have a significant impact on their lives. Articles 12 to 15 of the *Convention* stipulate that in the appropriate circumstances, the child has a right to be heard in matters that affect his or her well-being. Not only is this a right, but it is also an important part of effective decision- and policy-making.

We must also ensure meaningful participation from children in decision-making about laws and policies affecting their lives. Parents, educators, governments can help in addressing the problems of these particular groups by ensuring that children are involved and consulted on issues concerning them; by becoming aware of the *Convention* rights themselves - learning about their own rights and responsibilities as well as those of children; by putting the *Convention* into school curricula; by passing laws and developing policies that are sensitive to children's rights;

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and by ensuring that the political will exists and is acted on in order to ensure the effective protection of children's rights.

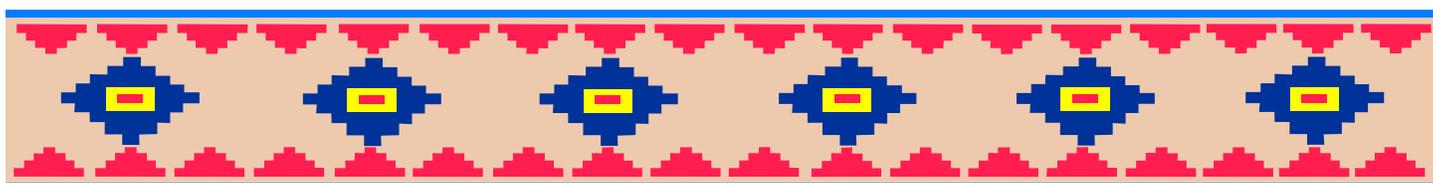
In terms of specific rights, the Committee made these, among other recommendations:

- Implement a national strategy to combat bullying;
- Develop and implement a strategy to combat the commercial sexual exploitation of children;
- Develop a federal strategy to combat child poverty that should include preventative measures aimed at high-risk families and a comprehensive housing strategy;
- That the federal, provincial and territorial governments, as well as parents, ensure that safe conditions exist for children who do work, and that such children are informed of their rights and encourage to remain in school.

In terms of Aboriginal Children in Canada, we must:

- Target funding as a priority for east disruptive measure with respect to child welfare, accompanied by an increased emphasis on prevention and early intervention;
- Make housing a top priority and develop enhanced initiatives to promote economic development on-reserve;
- Provide more funding to ensure that support services continue for Aboriginal Children living off-reserve;
- Review the services that it provides to Aboriginal communities to ensure that the approach and content are effectively tailored to meet the specific needs of Aboriginal children, youth, and families—this includes working directly with Aboriginal communities in the development of programs and services designed to meet their needs;
- Expand the ability of health services to provide in-home supports, and to get involved early and work with children in their homes;
- Accelerate work with provincial and territorial ministers of education to discuss ways in which Aboriginal people can be encouraged to become teachers and to work on reserves;
- Ensure that all federal policies and legislation with respect to Aboriginal children place particular emphasis on the need to take the cultural needs of Aboriginal children into account.
- In 2005, there were 7 million children in Canada. Those children are citizens, and as citizens, they have rights with concomitant responsibilities. If we want our children to mature to their full potential as adult citizens, we have a responsibility as a country to give them the best start in life we can offer. Implementing the UN *Convention on the Rights of the Child* in Canada is an excellent first step.

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Update and news from our



YOUTH ACTION COMMITTEE

The 2006-2007 academic year was full of great accomplishments for YAC, including activities to address the escalation of suspensions and expulsions under the *Safe Schools Act*, the increase in schools fees that affects lower-income students and the impact of hate crime activities. YAC also developed and presented numerous workshops to a variety of audiences, ranging from youth in the shelter system, JFCY's Policy Committee, conferences such as Ruckus! (hosted by the Toronto Youth Cabinet) and Pump Up the Volume (co-hosted by the School of Child and Youth Care and the Office of Child and Family Service Advocacy).

After a quiet summer, the Youth Action Committee is now looking for new students to join their group for the 2007-2008 academic year! The first meeting will be held on October 18, 2007 at 4:30 p.m.

Please let Emily Chan, Staff Lawyer at JFCY, know if you are coming or for more information: 416-920-1633 x.223 or chan@lao.on.ca

A Special Congratulations to Mehala Subramaniepillai

Mehala, and only 19 other students from across Canada, received the TD Canada Trust Scholarship for Community Leadership, valued at up to \$60,000 each, for making a meaningful and lasting difference in their communities.

Mehala has been an active YAC member for over 2 years. She graduated from Jarvis Collegiate in June 2007 and is currently in her first year of undergraduate studies in Life Sciences at the University of Toronto.

Mehala will be continuing her relationship with JFCY as the YAC youth facilitator.

JFCY has joined the *Mental Health Police Records Check Coalition*

The *Mental Health Police Records Check Coalition* is comprised of over 30 organizations and individuals who are working together to:

- educate consumers, families, stakeholders, agencies and police regarding the practice and impact of the release of non-criminal information;
- advocate for the development of consistent standards for police records searches across the province; and
- eliminate the discriminatory practice of releasing non-criminal information as part of the police records search process. This is the ultimate goal of the coalition – to advocate for something less implies that people with mental illness and disability are not equal members of society.

More information about the Coalition, including its views and activities, is available on the Psychiatric Patient Advocacy Office website at:

www.ppaio.gov.on.ca/sys-pol.htm

Case Updates

R. v. D.B.

Justice for Children and Youth intervened at the Ontario Court of Appeal and has been granted intervener status at the Supreme Court of Canada.

D.B. is a young person who was found guilty of manslaughter and given a youth sentence. The sentencing judge declared unconstitutional the sections of the *Youth Criminal Justice Act* which make it a presumption that the youth would get an adult sentence and have his identity published. The Crown appealed the decision to the Ontario Court of Appeal. Justice for Children and Youth was made an intervener in the appeal and argued that the sentencing judge was correct. The Court of Appeal in a unanimous decision held that those sections of the Act were unconstitutional because it is a principal of fundamental justice under section 7 of the *Charter* that youth be dealt with in a separate youth justice system. They decided that the Crown had to prove whether an adult sentence was appropriate and not that the young person had to prove why they should remain in the youth system. The case was appealed to the Supreme Court and will be heard October 10, 2007.



* * * * *

Case Updates (continued)



R. v. Banks

On August 23, 2007, the Supreme Court of Canada denied leave to appeal, in the case of *R. v. Banks* et al, bringing the case to a close. We are disappointed that the Supreme Court declined to hear this case, which we believe raised important questions about how the *Canadian Charter of Rights and Freedoms* should be interpreted to protect vulnerable poor people. The Court does not provide reasons for its decisions on leave applications.

The case involved 13 homeless people who challenged the constitutionality of the Ontario *Safe Streets Act*, which prohibited squeegeeing and some forms of panhandling. Lawyers from JFCY’s Street Youth Legal Services program had argued that the Act was unconstitutional on four Charter grounds (s.2(b) freedom of expression; s.7 life, liberty and security of the person; s.11(d) presumption of innocence; and s.15 equality) and one federalism ground (that purpose of the Act is to create criminal law, which is beyond the power of the province).

The Ontario Court of Appeal released its decision on January 14, 2005, rejecting all five grounds of the application. The Court accepted the arguments of the Crown and took a narrow approach to the scope of the case and to the application of the Charter to this particular Act. The *Safe Streets Act* has subsequently been amended to make it legal for people who are not poor to beg for money on behalf of charities in our streets in exactly the same way that is illegal for non-charities.

R. v. A.M.

What privacy rights do young people have?

Students in Ontario sometimes experience what they call “lockdowns”. The process involves every student being detained in a classroom until the police complete a search of the school. Such lockdowns often last about two hours. Such lockdowns may well seem justified when there is a specific danger to which the police are responding, such as a bomb threat or a call from the principal about an armed intruder. Several years ago the Supreme Court of Canada, in a cases called *R. v. M.R.M.*, held that the privacy rights of a student at school must be respected, but that there were lesser privacy rights at school than at home. How much those privacy rights are lessened is a question that arose in an Ontario case (*R. v. A.M.*) in which a school principal had invited the police to drop by the school any time to do a general search. Some time later, but not in response to any specific incident or any suspicion of the principal, they did so and found some drugs in the knapsack of a single student. The student was charged and the trial judge held that the student’s privacy rights had been significantly violated. The Court of Appeal agreed and the case went to the Supreme Court of Canada in the spring. Justice for Children and Youth was granted leave to intervene and submitted arguments about how the worlds of education law and criminal law intersect. The decision of the Supreme Court is expected to be rendered this fall.

K. B. and T. M. v. Toronto District School Board and Louie Papathanasakis (principal) Emery Collegiate Institute

Justice for Children and Youth is intervening as a “friend of the court” at a judicial review at the Ontario Divisional Court. Lawyers at Justice for Children and Youth will argue that a principal and school board cannot use powers under ss. 265 (1)(m) and 305 of the *Education Act* to transfer students to another school once the student’s suspensions have been completed and they would otherwise return to their home school. The judicial review also concerns whether the principal, and the school board, acted fairly when they used the provisions ss.265 (1)(m) and/or 305 to transfer the student for safety reasons. The case had to be adjourned so the school board could bring an application before the Ontario Court of Justice (youth criminal court) for directions on disclosure under the *Youth Criminal Justice Act*. The judicial review will be heard November 27 & 28 2007.



“Oh no! He’s joined a violent gang!”

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For more information

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Membership Application Form

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, under 18, free

YAC members, free

Students, free

Name/Organization:

Address:

Email Address: _____

Business Telephone #: _____
(include area code)

Home Telephone #: _____
(include area code)

I am interested in serving in the following committee(s):

Policy Committee

Youth Action Committee

Fundraising Committee

Community Development Committee

Please find enclosed membership fee of \$ _____ and a donation of \$ _____

Thank You for your Contribution