

# Justice for Children and Youth

Canadian Foundation for Children  
Youth and the Law

NEWSLETTER and ANNUAL REPORT

October 2003

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### **Message from the President**

The strength of an organisation such as ours, is its people. At Justice for Children and Youth we are blessed with a staff of dedicated lawyers and administrative personnel. During the past year we have had several staffing changes. This has been particularly challenging in a year when we had several test cases go forward, as well as moving locations twice, all of which required extra efforts. Fortunately, we have not only been able to rely on our staff, but also on a record number of enthusiastic volunteers, both high school and university students, as well as professionals. From the day to day work of the clinic, to special events such as the Youth Advisory Committee fundraiser, their presence benefits the work of JFCY, as well as raising our profile.

The other group of notable volunteers are the members of the JFCY Board. I would like to take this time to thank both those who will continue to donate their time, and remain as Board members, as well as those who will leave at the end of their terms. Their combined efforts help to keep the clinic running smoothly, in order that we can continue to address the needs of the community we represent.

I am also happy to add the Advocates Society, and Pro Bono Lawyers of Ontario, to the list of those we must thank. The demand from our clients, especially in the area of Education Law, has encouraged us to reach beyond our own organisation into the larger legal community. More than 50 Advocates Society members have attended our training sessions, and have generously donated their time and expertise, to the needs of those who traditionally could not have afforded their services.

As always, we are grateful to Legal Aid Ontario, without whose support, we could not meet the needs of the young people who rely on our services.

### **INSIDE THIS ISSUE**

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### **NOTICE OF ANNUAL GENERAL MEETING AND OPEN HOUSE AT OUR NEW LOCATION!**

**Wednesday, 29<sup>th</sup> October 3, 2003**  
**Open House 5-7 pm: AGM 7-9 pm**  
**415 Yonge Street, Suite 1203**

# Feature Article

## MAJORITY FAVOUR REPEAL OF SECTION 43

Toronto Public health has released their survey which was commissioned to determine attitudes of Canadians towards *section 43* of the *Criminal Code* R.S.C. 1985,C-46, which states:

*Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.*

The survey, conducted by Decima Research, in late August 2003, asked over 2000 Canadians whether they were in favour of repealing section 43, commonly referred to as the “spanking law”. The respondents were told that section 43 provides a defence to assault of a child if a court considers the punishment reasonable and for “correction”. Further, they were given a list of what courts have found to be “reasonable”, including: hard spankings, slaps to the head and face, and hitting of the buttocks and legs with belts and sticks.

The results of the survey showed that a majority of Canadians favoured repealing the section. There was a stronger majority among women, younger adults and students, and residents of Quebec and the Atlantic provinces. Further, the survey showed that if there were exemptions from prosecution for mild spankings, support for the repeal would significantly increase.

### Highlights

**Teachers:** Percentages who would end the section 43 defence for teachers

- 69% of Canadians agree
- 76% of younger adults (18-34) agreed
- 75% of women agreed

**Parents:** Percentages who would end the section 43 defence for parents

- 51% of Canadians agreed
- 58% of younger adults (18-34) agreed
- 59% of women agreed

The results of this survey would show that contrary to most media reports, i.e. that only a small minority of Canadians favour repealing section 43, at least half the population favours its repeal. If one considers the response from young people, it would suggest that we are moving towards a significant majority in the future. Furthermore, in countries such as Sweden, where the laws have changed such that corporal punishment is banned, there has been a significant shift in attitude, such that a large majority supports the ban. One can expect a similar shift, should Canada move to ban corporal punishment.

The results of this survey are not only good news for children, but also for parents, and society as a whole. There is a large body of research that consistently points to both the harm, and the ineffectiveness of

physical punishment. (e.g. Ref: Gershoff, E.T. (2002), *Corporal Punishment by parents and Associated Child Behaviours and Experiences: A meta-analytic and theoretical review*. Psychological Bulletin, Vol. 128, p.p. 539-579). Further, while repealing the law will not end the abuse of children, we know from research, that those who accept the use of physical punishment are more likely to use it. Therefore, a shift away from corporal punishment as an acceptable form of correction, will inevitably lead to a reduction in the number of abused children. Aside from the physical harm that children suffer, evidence from studies also show corporal punishment affects children's social and emotional development.

Section 43 became law in 1892. It is based on English common law which permitted corporal punishment of wives, servants, apprentices and children. At this time, only children continue to be subject to this Draconian law.

On October 3, 2003, the UN Committee on the Rights of the Child commented on Canada's 2<sup>nd</sup> report to the United Nations on Canada's compliance with the United Nations Convention on the Rights of the Child. The Committee stated their deep concern that Canada had not enacted legislation prohibiting all forms of corporal punishment, and that Canada had taken no action to remove section 43 from the *Criminal Code*. Their recommendation was "that the State party adopt legislation to remove the existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed."

As most of our members are aware, Justice for Children and Youth has challenged section 43 as both unconstitutional, and in contravention of the United Nations Convention on the Rights of the Child.. Cheryl Milne of JFCY and Paul Schabas of Blake, Cassels & Graydon LLP argued in front of the Supreme Court of Canada in June 2003, and we are currently awaiting the decision.



## **JFCY Summer Birthday Bash a Success!**

*by Alison Chapman (YAC member)*

Early this September the Youth Advisory Committee (YAC) hosted Justice for Children and Youth's 25<sup>th</sup> anniversary party at Christie Pits. We are proud to say that the event was a huge success; our live music and dancing attracted more than the expected turnout. We had people stopping by all day, from start to finish, asking questions about JFCY. YAC even recruited a few new members!

Events throughout the day included a live band (*Don't Jump!*) that played two spectacular sets, a raffle, a bake sale, and even a mini dance contest. In between *Don't Jump!*'s sets, we were kept entertained by several other musicians, all talented vocalists and guitarists. People continued to turn up right through to the end of the festivity; we almost wished we could have extended it longer!

Planning this event took a lot of time and effort, so we would like to thank all of the YAC members who volunteered so much of their time to get it up and running. A very special thanks goes out to JFCY community development lawyer Emily Chan, who spent hours on the phone booking the Pits, organizing YAC meetings to make posters, and pulling the whole event together. All of us at YAC will miss Emily, and wish her the best of luck at her new clinic!



Dancing to the music and helping YAC celebrate



Benefit performers... Don't Jump



YAC member Ali mans the Candy floss maker



Popular entertainers Matt & Keith



Some of the young people in the "Pits" who joined in



YAC members: Gloria & Stephanie

## YAC CELEBRATES JFCY'S 25<sup>TH</sup> ANNIVERSARY

## 25 YEARS AT JUSTICE FOR CHILDREN & YOUTH (JFCY)

by Martha Mackinnon, Executive Director

In **1978**, our clinic was incorporated as the Canadian Foundation For Children and the Law (Justice For Children "JFCY") to promote the rights of children as individuals under the law. JFCY submitted a brief "Lawyers For Children: Where are we going?" to the Attorney General. The following year we brought our first test case involving the right to treatment in residential care. In **1980** we published a rights booklet for children : "Everything You Wanted to Know About Your Rights, But Were Afraid to Ask." University of Toronto law students worked with JFCY to provide legal services to youth on a part-time basis. I began law school in 1981 and began to volunteer at JFCY in our small, bare premises above a store at College and Spadina. In **1982**, JFCY became part of the province-wide legal clinic system, providing direct legal services to children and youth with a focus on juvenile justice, special education, 16 and 17 year old youth in transition and youth in residential care. In **1984**, we published the first edition of *Know Your Rights*, a guide to the justice system for young people.. This booklet was revised in the 1990s and has just been re-written based on the *Youth Criminal Justice Act*. The publication is widely used by probation officers corrections workers and other staff in youth-serving agencies, but its principle users continue to be the young people for whom it was designed. The next few years saw the advancement of children's rights in many ways: a school board was ordered to provide education to a child with significant disabilities; a young person won the right to social assistance in order to attend school after leaving a volatile home; a low-income family won the right to social assistance funding to make their home physically accessible to their child. We also moved to much better office space at 720 Spadina.

In **1989** we published one of our most popular resources: the *Teen Street Guide* . So far we have distributed more than 50,000 copies to Toronto youth!

In **1990**, The Canadian Foundation for Children and the Law (Justice for Children), officially changed its name to the Canadian Foundation for Children, Youth and the Law (Justice for Children and Youth), ("JFCY"). In **1992**, At the request of legal counsel for several youth, JFCY was asked to inspect a block of prison cells used for young offenders. JFCY advised the court that the cells did constitute "cruel and unusual treatment." These cells were closed soon after. After a group home responded to a house conflict by holding a youth face down on the ground for 30 minutes, JFCY argued to the courts that group home clients should not resort to violence nor should they be victims of violence. JFCY advocating that group homes use methods of handling conflicts in-house rather than through the court system. Unfortunately face down restraints continued to be used and at least two deaths have since resulted. JFCY had standing at the inquest into one of these deaths in **2002**.

In **1993**, JFCY continued its groundbreaking work in alternative measures to minor disputes by beginning peer mediation programs in the school system. By the end of **1994**, two such programs existed and the Attorney General's office recognized peer mediation sessions as an official alternative to the criminal justice system. JFCY was asked to consult on a series of such province-wide projects.

When 2 siblings aged 5 and 6 were adopted to Canada from Mexico and then separated 2 years later by the adoptive parent, JFCY defended the right of the boy to continue to have contact with his sister in **1995**. JFCY appeared on several appeals but ultimately, in **1998** obtained an order granting the boy access to his sister. JFCY also represented teenagers who wished to maintain contact with their siblings in a safe environment after leaving a dangerous home situation.

By the middle of the **1990s** JFCY was regularly recognized by appeal courts as having expertise and a unique perspective that justified allowing us to intervene in cases concerning children's rights. JFCY appeared before the Supreme Court of Canada to argue for the protection of privacy in the counselling and C.A.S. records of child victim witnesses. We successfully argued for the rights of students with disabilities to be able to express their own views in the processes that determine how their special education needs will be met. We argued that the best interests of Canadian children must be considered when their parents face a possible deportation order. We argued that the privacy rights of young offenders should not be routinely violated in schools. In each of these cases, we were successful.

JFCY was counsel to several youth who alleged beatings at the hands of jail guards at Elgin Middlesex Detention Centre. Charges were laid and in **1998**, three guards were convicted. In **1999**, we participated in the inquest into

the death of one of those young people who was transferred to Wellington and killed in custody after being cut off by a children's aid society. More than 3/4 of our recommendations were adopted by the jury.

In **1998**, JFCY, with partial funding from the Court Challenges Program, commenced the challenge to the corporal punishment provisions of the *Criminal Code* and began working with educators and other professionals to stop the use of and legislated excuses for violence against children. This case reached the Supreme Court of Canada in June in **2003**. We await the decision.

In **1999** we began a concerted effort to help street-involved youth. We began our Street Youth Legal Services (SYLS) project, sending a lawyer to shelters and drop-in centres where street-involved youth are found. In **2000**, we launched our website which was developed by high school students. We get requests for help or information every day. We began a constitutional challenge to the *Safe Streets Act* on the basis that the squeegeeing and panhandling provisions that can result in jail, are actually criminal law. As well, JFCY argued that begging is, constitutionally, a form of expression.

In **2000**, JFCY submitted a brief and made a presentation to the Standing Committee on Justice about the proposed *Youth Criminal Justice Act*. The next year, with funding from the Department of Justice, did focus-group research across Ontario to learn the main misconceptions held by youth about the *Young Offenders Act*. In **2002**, with funding from HRDC through the City of Toronto we researched the legal needs of street youth, using former street-involved youth to help collect the data. The research showed that street youth are more often the victims of crime than they are the perpetrators. Taking away a relatively safe way for them to earn a living tends to push them into more dangerous jobs in prostitution and drugs. In **2003**, we expanded our legal education materials by creating a poster and a series of 3 plastic cards (in 15 languages) to better inform young people about the effect of having a youth court record. We wrote 12 information sheets and 5 plastic cards for street-involved youth and the agency staff who work with them.

In **2002**: JFCY was granted intervenor status by the Ontario Court of Appeal to argue that parents have a fiduciary obligation to disclose their identity to their children. JFCY successfully intervened in an application for an injunction to permit a gay high school student to attend the school prom with his same sex date. We intervened in a case before the Court of Appeal to argue that a school board could not change a special education placement by using the *Safe Schools Act*.

These are only a few highlights of the last 25 years. As we begin our next quarter century in new office space at 415 Yonge Street, we are proud of what we have helped to accomplish and challenged by what yet needs to be done.

## **JFCY VITAL STATISTICS**

The following statistics represents some of the young people that Justice for Children and Youth have helped over the past twelve months:

We have provided brief services, advice and or referrals when necessary, to over **3,700** people.

We have provided legal information and help to over **600** street involved youth.

We have provided personalised legal information to over **250** people through our internet "ask a lawyer a question" service.

Our internet website has received more than **36,000** visits.

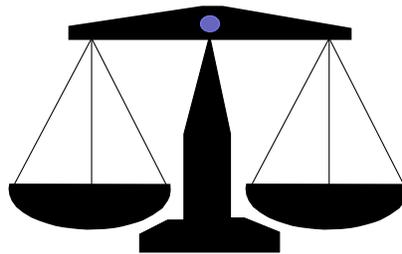
We argued test cases before **4** appellant level courts.

# TEST CASE UPDATES

**Safe Streets Act Challenge-Mary Birdsell.** The issue was whether the provisions of the so-called squeegee and pan-handling act violated the provisions of the Charter by discriminating against vulnerable young and poor people. We continue to await the decision of the Superior Court of Justice.

**Section 43 Challenge-Cheryl Milne & Paul Schabas.** On June 6, 2003 argued before the Supreme Court of Canada. We await the decision. We were supported in our efforts, by a grant from the Court Challenges Program and the *pro bono* services of Paul Schabas of Blake, Cassels & Graydon LLP.

**Falkiner V. Ontario (Ministry of Community, Social Services. Martha Mackinnon & Lee Ann Chapman** are seeking intervenor status at the Supreme Court of Canada. This appeal is by the government. The Court of Appeal decision was to strike the law which deemed that recipients of social assistance who lived together and of the opposite sex were spouses unless evidence proved the contrary.



## **Series on THE HISTORIC STATUS OF CHILDREN**

### **CHILD SUPPORT LAWS**

#### **FROM THE CODE OF HAMMURABI CIRCA 1780 B.C.**

137. If a man has determined to divorce a concubine who has borne him children, or a votary who has granted him children, he shall return to that woman her marriage-portion, and shall give her the usufruct of field, garden, and goods, to bring up her children. After her children have grown up, out of whatever is given to her children, they shall give her one son's share, and the husband of her choice shall marry her.

162. If a man has married a wife, and she has borne him children, and that woman has gone to her fate, her father shall lay not claim to her marriage-portion. Her marriage-portion is her children's only.

167. If a man has taken a wife, and she has borne him children and that woman has gone to her fate, and he has taken a second wife, and she also has borne children; after the father has gone to his fate, the sons shall not share according to mothers, but each family shall take the marriage-portion of its mother, and all shall share the goods of the father's estate equally.

168. If a man has determined to disinherit his son and has declared before the judge, "I cut off my son," the judge shall inquire into the son's past, and, if the son has not committed a grave misdemeanour such as should cut him off from sonship, the father shall not disinherit the son.

TOO BAD IT TOOK 36 CENTURIES FOR US TO DEVELOP SIMILAR LAWS!!!

# Announcements

**MANY THANKS, AND A FOND FAREWELL !**  
to **EMILY CHAN** our  
Community Development  
Lawyer. She finished her  
contract at JFCY and is now  
working at the Advocacy  
Centre for the Elderly. She is  
greatly missed.

**P.S.** She missed us as much as  
we missed her and she will be  
returning in 2 weeks!

**Welcome to UofT and Ryerson  
Co-op Students:**  
**Jill Forester**  
**Dana Fisher**  
**Robyne Kazina**  
and volunteer lawyer  
**Lisa Whynot**

**Many thanks to Gloria Dang**  
co-op student extraordinaire!

**Welcome to:**  
**Office Manager HAROLD TAN**  
who has been with us since May  
**2003**  
and  
**Administrative Assistant**  
**MARY ANN PATERSON** who  
was previously at one of LAO's  
Ottawa clinics

# **Thanks to our Supporters**

**LEGAL AID ONTARIO**

**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)

**ADVOCATES SOCIETY AND PRO BONO ONTARIO**

(Child Advocacy Program)

**PAUL SCHABAS & BLAKE CASSELS & GRAYDON**

(Section 43 Challenge; Articling Student Program)

# **Thanks to our Volunteers**

**We wish to thank our many dedicated  
volunteers for their various outstanding  
contributions.**

**A special thanks to:**

**Donald Burr**

**for all his years of service as a board member**

## 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 _____<br>_____ (age) |

NAME/ORGANIZATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE (B): \_\_\_\_\_  
(Area Code)

TELEPHONE (H): \_\_\_\_\_  
(Area Code)

I am interested in serving on the following Committee:

- |  |  |
|--|--|
| <input type="checkbox"/> Policy Committee      | <input type="checkbox"/> Youth Advisory Committee        |
| <input type="checkbox"/> Fundraising Committee | <input type="checkbox"/> Community Development Committee |

Please find enclosed my membership fee of \$ \_\_\_\_\_ and a donation of \$ \_\_\_\_\_  
(a charitable donation receipt will be issued). Thank you for your contribution.

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