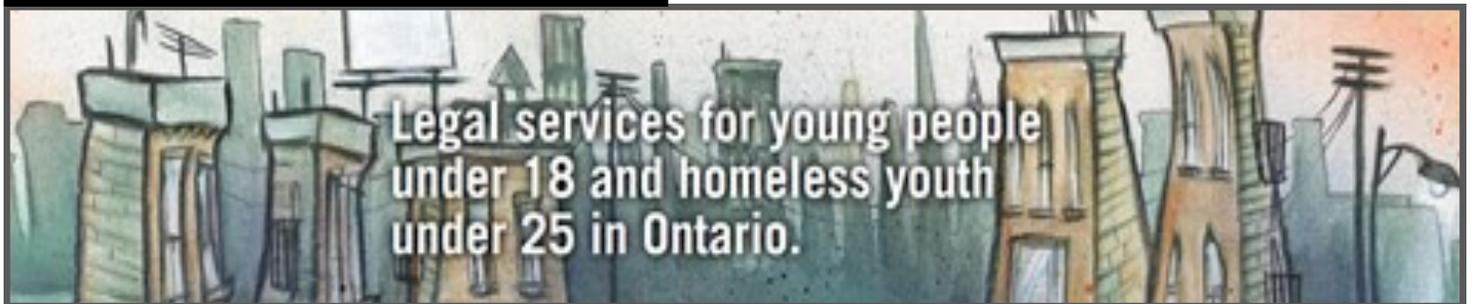


**J**USTICE  
FOR CHILDREN  
AND YOUTH

Annual Report 2018



Voice. Empowerment. Justice.



## JFCY Staff

Back Row (L to R): Andrea Luey, Staff Lawyer  
Mary Birdsell, Executive Director  
Karien Gibson, Office Manager  
Julia Huys, Street Youth Legal Services Lawyer  
Jesse Mark, Staff Lawyer (on leave)  
Jane Stewart, Staff Lawyer

Front Row (L to R): Ah-Young Bailey, Reception  
Karin Baqi, Staff Lawyer  
Athena Caldarola, Legal Assistant  
Emily Chan, Community Development Lawyer

Pictured separately: Samira Ahmed, Staff Lawyer (left)  
Claire Millgate, Staff Lawyer (right)





## Justice for Children and Youth (JFCY)

**JFCY** is a non-profit community legal aid clinic that specializes in protecting the rights of young people facing conflicts with the legal, education, social service or mental health systems. JFCY was formally incorporated as the Canadian Foundation for Children Youth and the Law in 1978, and has operated as Justice for Children and Youth since 1990. This year we celebrate our 40<sup>th</sup> anniversary.

**JFCY's mission** is to protect and advance the legal rights and dignity of children and youth in Canada.

**Voice and empowerment** are important tenants of the mission. Providing children and youth with the tools and context which allows them to speak for themselves as individual rights holders in our society is the most effective way to preserve their rights.

**JFCY's vision** is to increase our impact on the rights and dignity of children and youth by providing a deeper offering of sustainable community development, public legal education and direct legal services.

### JFCY Board of Directors

Anne Irwin, Chair and President

Emma Rhodes, Co Vice-Chair

Rishma Bhimji, Co Vice-Chair

Lennox Gibbs, Treasurer

Patric Senson, Secretary

Avery Adams

Sapna Goel

Norine Nathanson

Tim Welsh



## Message from the Chair



This has been a year of celebrations for JFCY. We marked the 40<sup>th</sup> anniversary of the clinic with great fanfare, throwing a party for our friends and supporters. We cheered on our Executive Director Mary Birdsell as she won two prestigious awards: the Law Foundation of Ontario's Guthrie Award for her outstanding contribution to access to justice, and a Canadian Senate 150<sup>th</sup> Anniversary Medal in recognition of her contributions to the country.

This has also been a year of hard work on behalf of the many children and youth living in poverty whom JFCY lawyers have assisted. Our clients typically face conflict within the criminal justice system, the education system, within social services and/or the mental health system. A youth with a criminal justice problem could be having issues at school and mental health problems so often multiple systems are involved. Clinic lawyers must draw on the breadth and depth of their specialized knowledge and skills in order to be of assistance. At JFCY, this know-how expands and deepens over the years, and this is one reason why a specialty legal clinic serving children and youth is so essential. The four pillars of the clinic's mandate - casework, law reform, community development and public legal education - are founded on this unique expertise.

Our Board of Directors underwent some notable changes this year. In January of 2018 I stepped into the role of Board Chair after Cheryl Milne stepped down upon being appointed to the Child and Family Services Review Board and to the Custody Review Board. We were all happy for Cheryl but sad to see her leave the Board as she contributed significantly over her three years as Chair. Another of our valued Board members, Darren Thorne, left for a similar reason, having been appointed to the Human Rights Tribunal of Ontario. Again, we were pleased for Darren but sad to see him go. Later in the year we welcomed a new member, Norine Nathanson, who has already proven herself to be invaluable.

I would like to thank each of our Board members for their contributions to the clinic; and on behalf of the Board, we thank each of our fabulous staff: Mary, Emily, Andrea, Jane, Samira, Claire, Jesse, Karien, Athena. You make a huge difference in the lives of hundreds of young people each year, and your talent, skill and dedication inspire us all.

Anne Irwin, Chair and President



## Message from the Executive Director

2018, our 40<sup>th</sup> year, has been an exciting year. This year we participated in a record number of test cases – interventions, assisting the courts as *amicus curiae*, and acting as public interest litigants. We have done so in Tribunals, and every level of court, including the Supreme Court of Canada. We have acted in immigration, education, youth criminal justice, *Charter* rights, family, child protection, child support, privacy, children’s rights as litigants, and the child rights implications in negligence law. In some cases we have seen the law advance the rights and dignity of children in new and affirming ways; in others we are left with more work to do.



We have been able to assist young people in direct service and in community projects across Ontario – from Timmins to Pembroke, Thunder Bay to Hamilton, St. Catharines, Peterborough, and Ottawa. We have had the privilege of working with professionals and front line service providers who care about children’s rights and the issues facing homeless youth across Ontario and across Canada.

I had the opportunity recently to reflect on the approach that we take in our work, and the perspective required to promote access to justice. I believe we must start with gratitude and an appreciation for the privilege that we experience as lawyers, and people with security and access to powerful parts of society; that we need to listen, and experience with grace, the wisdom of people who experience disadvantage and social exclusion, and who are willing, in the face of turmoil, to share their experiences, feelings, and needs with us; and that we must be defiant and refuse to accept that some people are left out and left behind. Creating a world where we share dignity and promote respect for the rights of children and young people, and other excluded and marginalized people, is at the core of our endeavor.

As ever, I extend endless thanks to my brilliant colleagues for their dedication and for making our work possible. We at JFCY extend our gratitude to the many people who support our work – our Board of Directors, our students and volunteers, our clinic and legal aid colleagues, our child rights colleagues, our Expert Advisory panel members, the lawyers on our referral list, our mentors, donors, funders, and friends. Thank you for joining in our work, and for promoting the rights and dignity of children and youth in Ontario and in Canada.

Mary Birdsell, Executive Director



## Casework

The staff lawyers at JFCY provide legal services to vulnerable young people under 18 years of age and those street-involved under 25 years of age. Many of these clients have complex needs and in multiple areas of law.

Through advocacy, mediation and litigation before various tribunals and all levels of court on behalf of their clients, JFCY successes this year include gaining accommodations for young people with disabilities across a variety of sectors, addressing school enrolment needs and school discipline issues, protection of privacy, protection from discrimination, assisting victims of crimes, monetary awards for criminal injuries and child support, advancing a reconciliation approach for indigenous children in a family law dispute, securing citizenship, and providing services for 16 and 17 year olds seeking to enter into Voluntary Youth Service Agreements with a children's aid society. JFCY has also travelled in limited circumstances across the province where the young person has no other access to legal services.

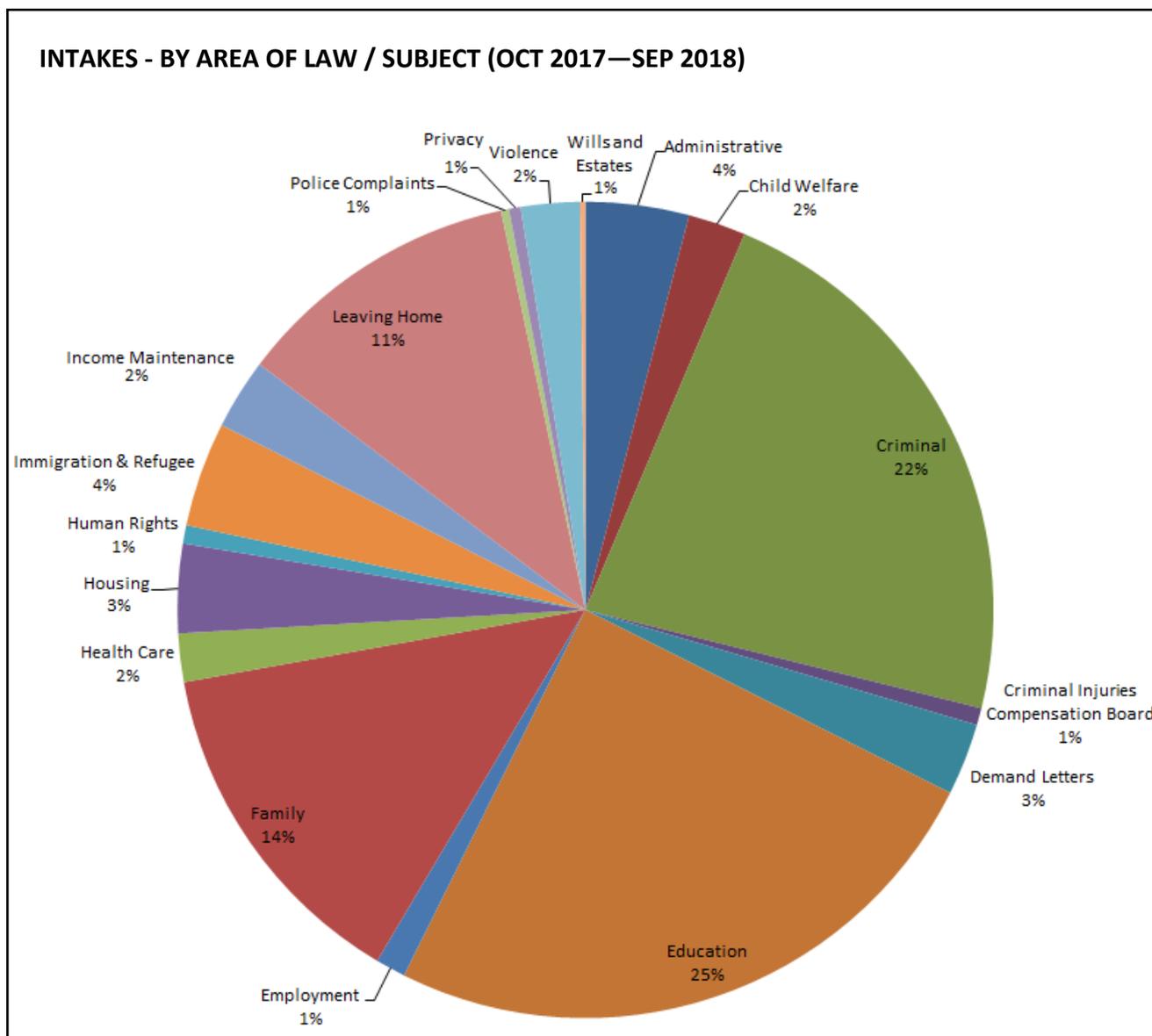
**The charts on these two pages illustrate the types of calls that JFCY receives.**

<b>INTAKES - BY AREA OF LAW / SUBJECT (OCT 2017 - SEP 2018)</b>	<b>TOTAL</b>	<b>%</b>
Administrative	79	4%
Child Welfare	44	2%
Criminal	434	22%
Criminal Injuries Compensation Board	13	1%
Demand Letters	55	3%
Education	481	25%
Employment	23	1%
Family	263	14%
Health Care	37	2%
Housing	68	3%
Human Rights	14	1%
Immigration and Refugee	80	4%
Income Maintenance	54	2%
Leaving Home	220	11%
Police Complaints	6	1%
Privacy	9	1%
Violence	45	2%
Will and Estates	4	1%
<b>TOTAL</b>	<b>1929</b>	



## Quasi “Duty Counsel” in Truancy Court

JFCY continues to provide quasi “duty counsel” services in Truancy Court at 311 Jarvis Court to ensure that the underlying circumstances of young people are heard and addressed appropriately, with the goal of reducing the use of the criminal justice system for school attendance issues.





## Test Case Litigation

JFCY's engagement in test case litigation aims to protect and advance the legal rights of all children and youth, ensure decisions comply with domestic law and the *Charter*, and focus the court's attention on child rights principles, including the *Best Interests of the Child*, as provided for under the United Nations *Convention on the Rights of Child* and international law.

In the last year, JFCY was counsel to clients, appointed *Amicus Curiae* by the courts, and asked to intervene in various test cases by the parties involved. We were involved in 12 different cases this year. A sample of the cases:

### ***Ontario (Children's Lawyer) v Ontario (Information and Privacy Commissioner)*** Ontario Court of Appeal, 2018 ONCA 559

Intervention in an appeal of a decision from the Information and Privacy Commissioner where a parent was seeking production, under a freedom of information request, of his child's file held with the Office of the Children's Lawyer who represented the child in family court. In denying access to the file, the Court cited important principles as articulated in the United Nations *Convention on the Rights of the Child*. Two significant quotes from the decision:

"Whenever a child is affected by a court or government process, the primary consideration must be the child's best interests."

"The only way that the role of the Children's Lawyer differs from that of a conventional solicitor-client relationship is that the child is entitled to a heightened protection of confidentiality as mandated by the *Convention*."

### ***Abdi v Minister of Public Safety and Emergency Preparedness*** Federal Court, Nova Scotia, 2018 FC 733

Intervened at the Federal Court in a case where the Minister was seeking to remove a young man who came here as a refugee at 6 years of age. He had been taken from his home and made a permanent guardian of the Nova Scotia child protection agency. No application for his Canadian citizenship was ever made and the removal being sought was based on his criminal convictions as a young adult. In ordering the matter back to the Minister's Delegate for a redetermination, the Court was critical about the lack of attention paid to the young man's *Charter* rights. A short time later, the Minister announced that they would not be pursuing his removal from Canada.



### ***Her Majesty the Queen v JD***

Ontario Court of Justice, Justice P. Downes, Sept 27, 2017

Acted as amicus curiae (friend of the court) in a case where the Court confirmed that under the privacy provisions of the *Youth Criminal Justice Act*, a young person could apply to have their youth court records destroyed. In this case, destruction was ordered on the basis that the crown had withdrawn the charges when it was discovered that the complainant had lied. JFCY made submissions about the interpretation of the *YCJA*, the best interests of the young person, the public interest, and the administration of justice.

### ***Her Majesty the Queen v TB-J***

Ontario Court of Appeal, 2017 ONCA 746

Intervened in an appeal where the Court was considering whether the sentence of a reprimand was appropriate when the young people were found guilty of a serious offence (unlawfully in a dwelling place). In agreement with our submissions, the Court held that the lower court judge had considered the relevant factors and that a reprimand is a lawful sentence, even for a serious offence. The Court noted that the young people had taken substantial rehabilitative measures on their own.

### ***Tom Le v. Her Majesty the Queen***

Supreme Court of Canada, Case 37971, heard Oct 12, 2018 (decision pending).

Intervened in an appeal where a 19 year old was charged after the police entered the backyard of his 17 year old friend where a group of people were gathering. The case is a constitutional challenge of the detention and search of the young people. JFCY made submissions about the way the *Charter* rights of the young people should be analysed given that the person who's consent was required for the police to enter, search and detain was a young person as defined by the *Youth Criminal Justice Act*.



Linda Rothstein presenting Mary Birdsell the Law Foundation of Ontario's Guthrie Award for her outstanding contribution to access to justice (left); and staff of JFCY in attendance at the award reception (right).

Acceptance speech: <http://www.lawfoundation.on.ca/news/mary-birdsell-guthrie-award-celebration/>



## Law and Policy Reform

JFCY advances and responds to current developments and proposed changes to laws that affect the rights of children and youth. Our ability to engage in this work is informed by our case work, and the lives and experiences of our clients. The lived experience of our clients animates our efforts to ensure that law and policy meaningfully support children and their rights. Activities from this past year include:

Submissions to the Ontario government regarding the qualifications of children's aid society staff; one of the many new Regulations under the new *Child Youth and Family Services Act* (CYFSA).

Meetings with Assistant Deputy Ministers regarding the new CYFSA and School Board policies regarding "fresh starts."

Participation in community based consultations regarding the Street Checks legislation.

Consultations with Senators regarding the *Cannabis Act* and JFCY's concerns about submissions to Government, and children's rights violations.

Consultation regarding possible changes to Ontario's Family Law Rules regarding children's participation in the family courts, especially regarding matters initiated by young people. These consultations seek to ensure an appropriate balance in the complex milieu of family law considerations, so that children's rights are respected - including the right to be heard and the right to be protected from harm.





The SYLS program is designed to provide legal services directly to street-involved young people at drop-in centres and shelters – the places where they congregate to access other services, such as health care, food, employment assistance and counseling. SYLS services include legal education workshops, legal advice and representation at various tribunals and courts, engagement with youth in law reform activities, and policy work.

Street-involved young people often have multiple and interconnected legal problems. Complex systemic barriers, including a lack of financial resources, social isolation, discrimination and mistrust often prevent our clients from getting the help they need. SYLS provides meaningful access to justice by overcoming these barriers.



The SYLS lawyer also engages in community development and law reform; this year's activities included:

Being on the Board of Directors for A Way Home Toronto and A Way Home Canada.

Continued partnership with Sketch Working Arts to provide experiential legal information workshops to people whose work connects them with youth experiencing homelessness; and hosting the annual Street Law Smarts Forum.

Being on the Advisory Committees for Covenant House on Sex Trafficking and for the Canadian Observatory on Homelessness.

Attending the International Summit on the Legal Needs of Street Children in Brazil.

Presenting at the American Bar Association conference in Vancouver on the implementation of the United Nations Committee on the Rights of the Child's General Comment No 21 on "Children in Street Situations." An article about the presentations by the SYLS lawyer's and Professor Stephen Gaetz who has been working with JFCY on youth homelessness research for almost 20 years:

[https://www.americanbar.org/news/abanews/aba-news-archives/2018/02/us\\_canadian\\_service.html](https://www.americanbar.org/news/abanews/aba-news-archives/2018/02/us_canadian_service.html)



## **Public Legal Education (PLE)**

In conjunction with meeting the legal needs of our clients, JFCY creates and maintains a wide range of public legal education materials and an on-line Legal Wiki.

This year, over 10,000 hardcopies of our publications were distributed at various events and we have had over 2700 visits to the publications download page of our website.

Demand for speaking engagements remains high and JFCY lawyers have delivered over 150 presentations this past year, including:

### **Workshops for young people**

In a variety of contexts such as school assemblies and conferences, alternative attendance and after-school programs, in community based agencies such as the Youth Hubs in Toronto Public Libraries, and for Blakes' annual Take Your Kids to Work Day.

### **Training for post-secondary students and front-line professionals**

Specialized professional training on ensuring a child rights based approach in practice for professionals who work with young people; for audiences such as principal candidates, guidance counselors, provincial advocates, child welfare and housing workers, children's mental health care providers, probation officers, undergraduate and law students and youth justice workers, and youth employment counselors from various service agencies

### **For lawyers and adjudicators**

Through Osgoode's CPD programs, the Law Society of Upper Canada, the Ontario Bar Association and the Canadian Bar Association; conferences hosted by the Canadian Association of Refugee Lawyers, the Canadian Association for the Practical Study of Law in Education and the University of Ottawa's Interdisciplinary Research Laboratory on the Rights of the Child; at Regional Legal Clinic Training and 311 Jarvis Court, and 47 Sheppard Court Open Bar Series.

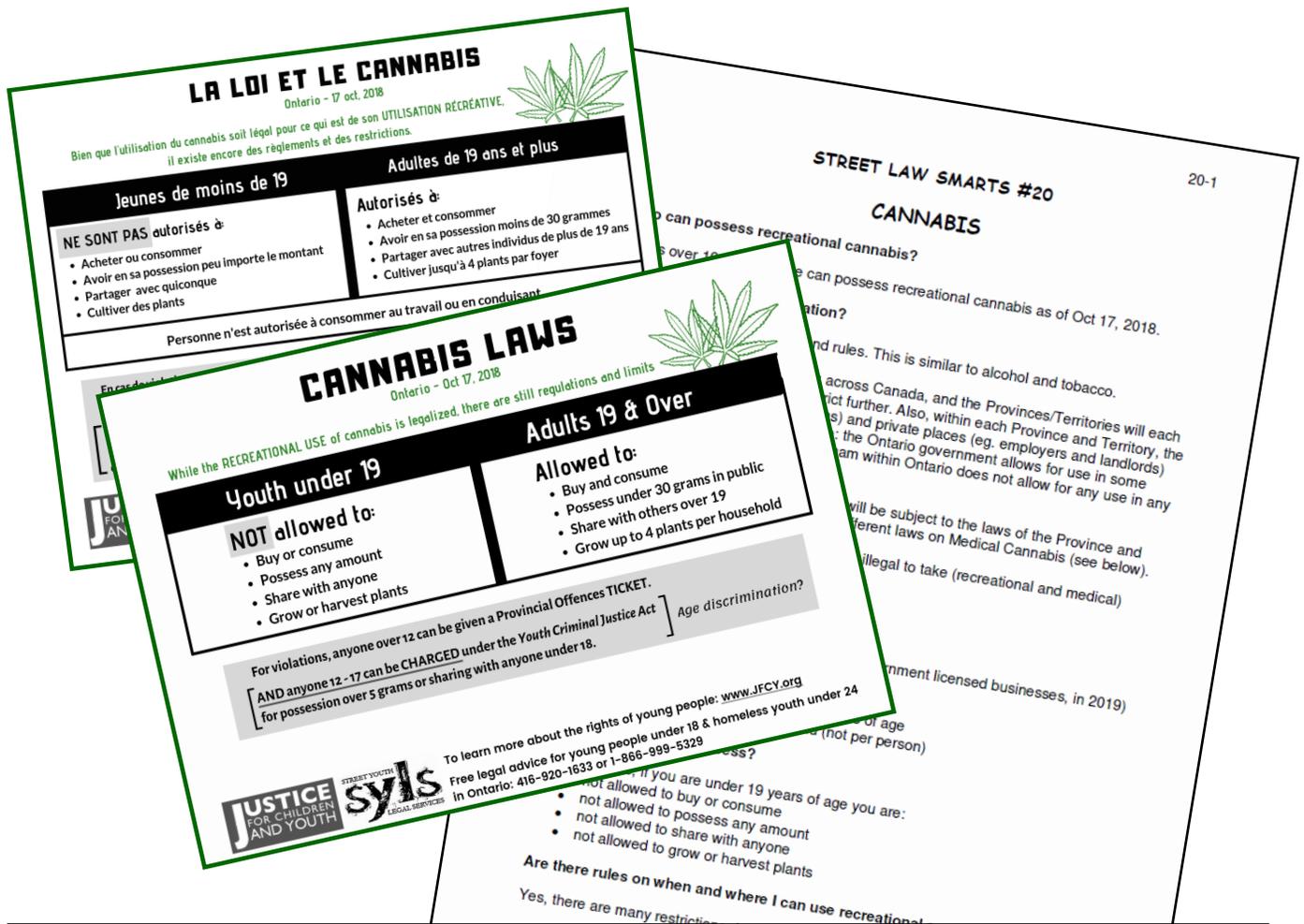
### **At specialized events**

Such as the Law Society's Access to Justice conference; LAWS-LEAF Person's Day conference; Mental Health and Homelessness conference; TDSB's Envision conference for LGBTQ+ students; OJEN's Agent of Landlord sessions; Connecting to Care 3 conference in Thunder Bay; youth leadership conference on Batchewana First Nation; Child Rights Day hosted by Senator Oh in Ottawa; human rights and education law for Black History month; for the National Judicial Institute regarding LGBTQI2S Children and Teens in Court; and various events regarding the new *Cannabis Act* and *Child Youth Family Services Act*.



**PLE materials** included updates to existing handouts and the creation new ones to reflect the changing legal landscape such as:

- Cannabis infographic
- Update to the Cannabis chapter of Street Law Smarts
- Voluntary Youth Service Agreements (VYSAs) with children’s aid societies blog
- Leaving Home pamphlet inclusion of VYSA information





## Community Projects and Partnerships

A part of JFCY's vision is to provide a deep offering of sustainable community development. Through the years, JFCY remains involved in a number of on-going partnerships and engages in new initiatives in various sectors.

A selection of this work:

The Executive Director is the Chair of the Ontario Bar Association's Child and Youth Law section, Treasurer for the Canadian Coalition on the Rights of the Children, on the Canadian Bar Association's Children's Law Committee, and on the Board of Directors for A Way Home Canada.

JFCY lawyers are also on the Executive of the Ontario Bar Association's Education law and Constitutional, Civil Liberties, and Human Rights sections.

On the 311 Jarvis Advisory and Community Youth Court Committees, the Provincial Advisory Committee on the Child Cluster at the Social Justice Tribunals Ontario, the Criminal Injuries Compensation Board Provincial Advisory Committee, the Ministry of Child and Youth Services' Youth Justice Advisory Panel, Steering Committee of Ryerson University's Cross-Over Youth Project, Legal Aid Ontario's Criminal Law Advisory Panel, and the Office of the Children's Lawyer Advisory Group regarding the new *Child Youth Family Services Act* and Voluntary Youth Service Agreements for 16 and 17 year olds.

Partnership with Peacebuilders to create an in-school restorative justice program; this is an on-going multi-year initiative funded by Trillium and in collaboration with the Toronto District School Board, Toronto Police Service, and various community members and agencies.

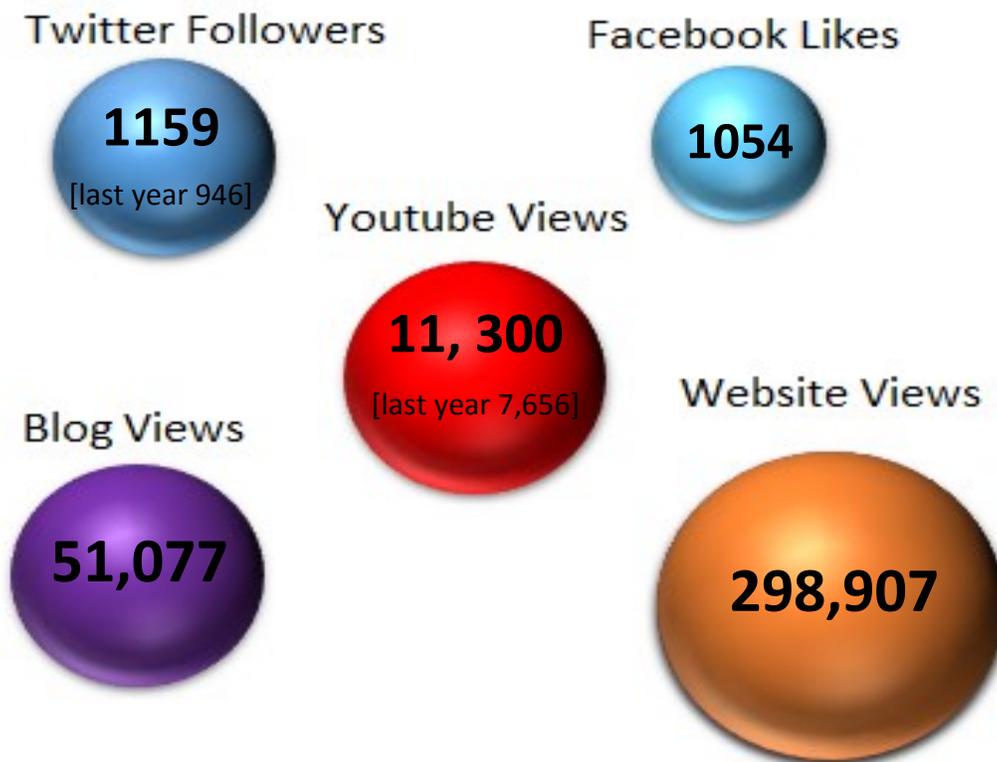
## Students

JFCY hosts students to provide opportunities to learn about children's rights, develop skills and enhance the work of the office; this has included:

- Secondments from Blakes' law firm and Peacebuilders
- Academic placements from the social work programs at Ryerson University and the University of Toronto
- Law students through Pro Bono Students Canada
- Summer students funded by their law school's public interest grants at the University of Windsor and Harvard University
- Law student practicums from the Universities of Toronto, Ottawa and Windsor
- Law clerk student from Seneca College
- Articling student on partial funding Legal Aid Ontario



## Online Presence



## In the Media

JFCY lawyers receive numerous requests for interviews regarding our cases, background information on the legal landscape for children and youth in Ontario and Canada, and commentary on issues that impact the rights of our clients. A sample of when we have appeared in TV, radio and in print media:

Regarding access to justice for young people:

<https://www.cbc.ca/listen/shows/metro-morning/segment/15623439>

Regarding the risk of deportation for children who were in care of the state (see page 7):

[www.cbc.ca/radio/thecurrent/the-current-for-january-15-2018-1.4487410/january-15th-episode-transcript-1.4488236](http://www.cbc.ca/radio/thecurrent/the-current-for-january-15-2018-1.4487410/january-15th-episode-transcript-1.4488236)

Regarding the right of children to solicitor-client privilege (see page 7):

[www.lawtimesnews.com/author/shannon-kari/child-rights-advocates-applaud-oca-ruling-15906/](http://www.lawtimesnews.com/author/shannon-kari/child-rights-advocates-applaud-oca-ruling-15906/)



## Supporters and Donors

Thank you to all our members and individual donors who continue to support JFCY.

A very special thank you to the former Madam Justice Dunbar for her generous spirit and support of JFCY.

## Volunteers

We are grateful to our dedicated **Board Members** who make our work possible by bringing a range of skills and commitment to the advancement of social justice and children's rights.

The **Policy Advisory Panel** members, composed of expert scholars and professionals from a range of disciplines most relevant to our work, volunteer their time to share research, write or review materials, and provide expert advice to the lawyers at JFCY.

The **Development and Fundraising Committee** members work to enhance the clinic's ability to raise funds in a variety of ways to support the organization's unfunded and underfunded work.

## Funders

Legal Aid Ontario

City of Toronto's Investing in Neighbourhoods

