

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**Amelia Penney-Crocker, Parker Boot-Quackenbush, Khadijat Folasayo Dairo,
Catherine He, Tharan D'Silva, Katie Yu, Diego Christiansen-Barker, Lachlan
Brown, Zoey Ann Purves, Jacob Colatosti, Milan Rozotto-Lagos, Oswaldo Paz
Flores, Lauren Handley and Justice for Children and Youth**

Applicants

and

THE ATTORNEY GENERAL IN RIGHT OF CANADA

Respondent

**AFFIDAVIT OF THE PUBLIC INTEREST APPLICANT
JUSTICE FOR CHILDREN AND YOUTH
Sworn 30 November, 2021**

I, **Anne Irwin**, Barrister and Solicitor, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a Barrister and Solicitor and a member in good standing of the Law Society of Ontario.
I am the Chair of the Board of Directors of the Canadian Foundation for Children Youth and
the Law, which operates as Justice for Children and Youth (“JFCY”). As such, I have
knowledge of the matters deposed to herein.
2. This affidavit outlines my information and belief as to the expertise and commitment of
JFCY regarding the legal rights and interests of children and youth across a range of legal
subjects, under Canada’s *Charter of Rights and Freedoms* (the “**Charter**”) and under

international and human rights instruments including the United Nations *Convention on the Rights of the Child* (“*UNCRC*”).

3. This affidavit describes why JFCY has a genuine interest in bringing forth this application, and explains the reasons that the application is being brought by the organization as a public interest litigant. JFCY believes that section 3 of the *Canada Elections Act* (SC 2000, c. 9) violates sections 3, 15 and 2(b) of the *Charter*, and the rights of children as articulated by the *UNCRC*, and the *International Covenant on Civil and Political Rights*, including their rights to democratic participation.
4. The information contained herein has come to me by way of my work on the Board, through the staff of JFCY, and through my review of various documents and materials regarding the history and activities of the organization.

A. OVERVIEW OF JFCY’S OPERATIONS AND SERVICES

5. The Canadian Foundation for Children, Youth and the Law was incorporated in the Province of Ontario in 1978 as an independent non-profit organization. Since December 1982, it has received its core funding from Legal Aid Ontario (formerly the Ontario Legal Aid Plan, Clinic Funding Committee), as a legal aid clinic specializing in child and youth rights and children’s law. The Foundation operates as “Justice for Children and Youth” (“JFCY” or “the clinic”).
6. JFCY has a broad membership, primarily Ontario-wide, comprised of individuals and agencies who work with children and youth or who are committed to protecting and promoting their rights. JFCY is a child and youth rights organization, and was constituted for the purpose of protecting, advancing and promoting the rights and dignity of children and young people, and their recognition as individuals under the law. JFCY achieves this goal by assisting individual young people and by engaging in systemic advocacy through test case litigation and individual legal representation, law reform initiatives, community development, and public legal education. The clinic’s goal is to have a systemic impact, ensuring that all children and youth benefit from the clinic’s specialized expertise and efforts to advance child and youth rights in all matters handled by JFCY.

7. JFCY is the only legal clinic in Canada exclusively practicing law on behalf of children and youth. The clinic provides legal services to people under 18 years of age, and to unstably housed and homeless youth to age 25. Representation has been provided to thousands of young people in a full spectrum of legal and quasi-legal proceedings, and across a broad range of legal issues, including human rights, health and mental health, youth criminal justice, criminal justice and provincial offences, education, child protection, family, privacy, victimization and children as witnesses, housing, income maintenance, human trafficking, criminal injuries compensation, immigration, policing, correctional issues and more. In all our work JFCY seeks to improve access to justice for young people. Many of JFCY's clients face complex personal, social and legal issues, and we see the impact of personal and intergenerational discrimination and systemic discrimination on their lives; including the negative impact on their ability to access justice.
8. A significant part of the clinic's practice is the representation of young people who are facing legal issues that span multiple areas of law, and often involve *Charter* and international human rights considerations. The clinic focuses on representing young people and supporting their ability to understand the law, the nature of legal proceedings, comprehend the administration of justice, and to instruct counsel. Direct assistance includes services for children and youth where the unique implications of childhood and adolescence affect the legal issues and relevant legal analysis involved. Lawyers take instructions from the young person, and advocate for their interests. This requires the provision of trauma-informed and developmentally appropriate legal services, and a multi-disciplinary approach to addressing legal issues.
9. In addition to direct and traditional legal representation of individual young people, JFCY provides summary legal advice, legal information, and public legal education to young people, parents, professionals (including lawyers), and community groups throughout Ontario.
10. JFCY also conducts test case litigation on behalf of children and young people, and is regularly consulted by government, agencies, and counsel from across the country in respect of child and youth issues in all areas of law, as well as on topics including, the legal subjects

listed in para 7 above, and the provision of legal representation to children and youth, the application of the *Charter* to child and youth issues, and the interpretation and application of international legal instruments, including the *UNCRC* and related international instruments, such as the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*.

11. JFCY is concerned with the fundamental aspects of young people's participation in society, with particular attention to promoting their meaningful access to activities, processes and systems that support their evolving capacities and agency. Young people's access to the franchise is just such a foundational rights issue. It is a rights issue which, if achieved, would benefit all young people regardless of any individual privilege or vulnerability, or intersecting experience of marginalization, and/or social and political exclusion, and would, in fact, serve to ameliorate age-based discrimination and other intersecting forms of historical disadvantage experienced by young people. The right to vote is a profound and powerful component of social agency and belonging, and we know that young people see it as an important part of being able to participate, be heard and to have their concerns taken seriously.

B. JFCY'S EXPERTISE IN TEST CASES - AS AN INTERVENER, *AMICUS CURIAE*, AND A PUBLIC INTEREST LITIGANT

12. JFCY has a long and extensive experience as an intervener, as *amicus curiae*, and as a public interest litigant in cases involving the law as it relates to children and young people, as well as acting at a number of Coroner's Inquests. In every context, JFCY has been able to provide the Court or tribunal with analysis based on its expertise in the unique social and legal implications of childhood, adolescence and emerging adulthood; and in assisting the court in evaluating the appropriate application of the *Charter* and various international human rights instruments, with particular focus on the *UNCRC*.
13. Cases in which JFCY has been granted intervener status at the Supreme Court of Canada includes:
 - *R v CP*, 2021 SCC 19;
 - *R v KJM*, 2019 SCC 55;

- *R v Le*, 2019 SCC 34;
- *Rankin (Rankins Garage) v JJ*, 2018 SCC 19;
- *Kanhasamy v Canada (Citizenship and Immigration)*, [2015] SCR 909;
- *Moore v British Columbia (Education)*, [2012] 3 SCR 360;
- *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 SCR 524;
- *Canada (Prime Minister) v Khadr*, [2010] 1 SCR 44;
- *R v JZS*, [2010] 1 SCR 3;
- *AC v Manitoba (Director of Child and Family Services)*, [2009] 2 SCR 181;
- *R v AM*, [2008] 1 SCR 569;
- *R v SAC*, [2008] 2 SCR 675;
- *R v LTH*, [2008] 2 SCR 739;
- *R v DB*, [2008] 2 SCR 3;
- *R v BWP*; *R v BVN*, [2006] 1 SCR 941;
- *R v CD*; *R v CDK*, [2005] 3 SCR 668;
- *R v RC*, [2005] 3 SCR 99;
- *FN (Re)*, [2000] 1 SCR 880;
- *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817;
- *Eaton v Brant County Board of Education*, [1997] 1 SCR 241;
- *R v O'Connor*, [1995] 4 SCR 411; and
- *A (LL) v B (A)*, [1995] 4 SCR 536.

14. JFCY has represented a young person, intervened or been appointed *amicus curiae* in many cases before other levels of court and before tribunals involving child and youth rights, which frequently engage issues related to human rights, and substantive equality

and other *Charter* values and issues. These cases include:

- *Minister of Employment and Social Services v SH and Justice for Children and Youth*, 2021 SST 117 (CanLII); and *Minister of Employment and Social Development v SH and Justice for Children and Youth*, 2021 SST 412 (CanLII), (application for judicial review pending)

- *Smith v YouthLink Youth Services*, 2020 ONSC 7624 (CanLII);
- *Justice for Children and Youth v JG*, 2020 ONSC 4716;
- *RV v TCHC*, 2020 ONSC 251;
- *ETFO et al v Her Majesty the Queen*, 2019 ONSC 1308 (CanLII);
- *Abdi v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 733 (CanLII);
- *Toronto Star Newspapers Ltd v The Attorney General of Ontario*, 2018 ONSC 2586;
- *KW v Toronto Catholic District School Board*, 2018 ONSC 2794 (CanLII);
- *Ontario (Children's Lawyer) v Ontario (Information and Privacy Commissioner)*, 2018 ONCA 559 (CanLII);
- *Toronto (Police Service) v LD*, 2018 ONCA 17 (CanLII);
- *R v TB-J*, 2017 ONCA 746 (CanLII);
- *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 (CanLII);
- *RG v KG*, 2017 ONCA 108 (CanLII);
- *NL v RRM*, 2016 ONCA 915 (CanLII);
- *R v ZW*, 2016 ONCJ 490 (CanLII);
- *R v Hosannah*, 2015 ONSC 380 (CanLII);
- *CMM v DGC*, 2015 ONSC 2447 (CanLII);
- *Toronto Star Newspaper Ltd v Ontario*, 2012 ONCJ 27 (CanLII);
- *R v KM*, 2011 ONCA 252 (CanLII);
- *Bhajan v Bhajan*, 2010 ONCA 714;
- *R v Banks*, 2007 ONCA 19 (CanLII);
- *Jackson v Toronto Catholic District School Board et al* (2006), 214 OAC 39 (ON SCDC);
- *Piran Ahmadi Poshteh v The Minister of Citizenship and Immigration*, [2005] FCJ No 381 (FCA);
- *Bonnah (Litigation Guardian of) v Ottawa-Carleton District School Board* (2003), 64 OR (3d) 454 (ONCA);
- *Hall (Litigation guardian of) v Powers* (2002), 59 OR (3d) 423 (ONSC);
- *Hawthorne v Canada (Minister of Citizenship and Immigration)*, [2002] FCJ No 1687 (FCA);
- *Louie v Lastman* (2001), 61 OR (3d) 449 (ONCA); and

- *Francis (Litigation guardian of) v Canada (Minister of Citizenship and Immigration)* (1999), 49 OR (3d) 136 (ONCA).

15. JFCY has acted as a public interest litigant in matters that considered violations of young people's *Charter* rights, including section 15 equality rights, and their rights under international legal instruments such as the *UNCRC*. These cases include:

- JFCY was the public interest litigant with a single individual litigant in *Mayes and JFCY v Minister of Citizenship and Immigration*, Federal Court, Docket T-797-18, (resolved by order on consent January 22, 2019), regarding citizenship fees for people who have been in the care of children's aid societies.
- JFCY acted as a public interest litigant with an individual child applicant in *BB and Justice for Children and Youth v Minister of Citizenship and Immigration*, Court File No. IMM-5754-15 (FC), concerning the rights of children in immigration detention.
- JFCY was one of the three public interest organization litigants in *Canadian Doctors for Refugee Care et al v Canada (Attorney General) et al* 2014 FC 65, regarding the rights implications of the cancellation of the interim federal health care plan. JFCY presented arguments regarding the rights implications for children and youth.
- JFCY was the sole applicant as a public interest litigant in *Canadian Foundation for Children Youth and the Law v Canada (Attorney General)*, [2004] 1 SCR 76, challenging the constitutionality of the corporal punishment defence in the Criminal Code of Canada.

16. Beginning in 1999, JFCY represented a large number of young people who were charged under the *Safe Streets Act* ("SSA"). This matter, which challenged the constitutionality of the *SSA*, began with over 200 defendants who were charged with various offences under the *SSA*, with JFCY representing a significant number of those defendants. The matter proceeded with only 13 defendants after the prosecutor withdrew the charges against the remaining defendants. The matter was eventually heard in three levels of court: *R. v. Banks*, [2001] O.J. No 3219 (OCJ); *R. v. Banks*, [2005] O.J. No 98 (ONSC); *R. v. Banks*, 2007 ONCA 19 (CanLII). Because of the elimination of most of the original defendants, and the

elimination of certain issues as the matter proceeded on appeals, the comprehensive challenge to the constitutionality of the legislation was significantly frustrated.

17. JFCY has been a party, or acted as counsel to a party, at a number of inquests involving the deaths of young people in institutional care, including:

- i. JFCY was counsel to the Empowerment Council, a party at the Inquest into the Death of Ashley Smith in 2012 - 2013. This Inquest addressed the death of a young woman with complex mental health concerns, who had been moved from a youth custody facility in New Brunswick to the adult federal penitentiary system in Ontario;
- ii. JFCY was granted party status at the Inquest into the Death of David Meffe (2004), which investigated the suicide of a young person in pre-trial detention at the Toronto Youth Assessment Centre;
- iii. JFCY was granted party status in the Inquest into the Death of William Edgar (2001), a young man in the care of the Toronto Children's Aid Society, who died after a senior staff member restrained him at a group home; and,
- iv. JFCY was granted party standing at the Inquest into the Death of James L. (1998), a young man who was killed while in custody as a young offender, and who had been a client of a JFCY lawyer.

18. In 2019, JFCY was granted Case Development funding from the Court Challenges Program ("CCP") to engage in case development activities related to a constitutional challenge to the minimum voting age prescribed by the federal *Elections Act*. Case development activities are described further below at paras 22 - 24.

19. Following the completion and reporting of the case development activities, JFCY applied for and was granted Litigation funding from the CCP to bring an application to challenge the minimum voting age in Canada.

C. PUBLIC LEGAL EDUCATION, PROFESSIONAL DEVELOPMENT, AND COMMUNITY DEVELOPMENT ACTIVITIES

20. JFCY is actively involved in policy, advisory, law reform, community development and education initiatives, addressing children's rights in a variety of settings and systems, a great many of which relate to child and youth rights under the *Charter* and the *UNCRC*.

Voting Age oriented activities

21. In particular, JFCY has followed and been involved in initiatives related to voting age limits in Canada and beyond. In 2019 JFCY joined an ad hoc group of organizations, and academics, convened by the David Asper Centre for Constitutional Rights (the "Asper Centre"), interested in the issue of voting age limitations in Canada. This included groups from around the country: the Canadian Civil Liberties Association ("CCLA"), the Canadian Coalition for the Rights of Children ("CCRC"), UNICEF Canada, the Students' Commission of Canada, the Society for Children and Youth of British Columbia, The Fédération de la jeunesse canadienne-française, the Fédération des jeunes francophones du Nouveau-Brunswick, Children First Canada, the Asper Centre, and JFCY. These organizations created an ad hoc steering committee to explore the possibility of a constitutional challenge to the minimum voting age in Canada.
22. After a number of coordinating meetings with this ad hoc group, JFCY applied for and was granted Case Development Funding from the CCP. JFCY worked with others to develop public legal information materials, meet with young people, bring young people together, participate in education and information sessions, and engage in consultations with young people across the country regarding their interest in, and views regarding, seeking to lower the voting age. UNICEF Canada, the Society for Children and Youth of BC, the Students Commission of Canada, and Children First Canada all held specific consultation events and created reports outlining the results of these consultations and events.
23. Specific activities in 2019 – 2020 include: JFCY worked with UNICEF Canada and developed infographics regarding voting age issues; JFCY worked with others to develop public education, curriculum and consultation materials for use during national consultations with young people; during a webinar entitled "Every Citizen – Perspectives on Lowering the Voting Age" that included academics, and legal, political and youth experts including Canada's Senator McPhedran and activists from Scotland, JFCY's Executive

Director presented on child and youth rights, how they relate to voting age issues in Canada, and the elements of a potential *Charter* challenge; JFCY's Executive Director was an adult ally to UNICEF Canada's national event 2020 Thematic Session on Democracy and Voting; and a JFCY lawyer was an expert advisor to the Students' Commission of Canada's national consultation on voting age issues at their 2020 "The Canada We Want" Conference.

24. As reported to the CCP by JFCY, each of the 4 national youth consultations on voting age limits in Canada demonstrated a significant and broad-based interest, enthusiasm and support by young people to engage in activities to seek to lower the voting age in Canada, including interest in *Charter* based litigation. Through these and other events, young people began to express interest in being personally involved in bringing litigation to challenge the existing minimum voting age in Canada. At the end of 2020, JFCY reported to the CCP on the case development activities and sought litigation funding which was granted in March of 2021.
25. Since being granted litigation funding, JFCY has been working extensively with young people who reached out seeking an opportunity to bring a *Charter* challenge to the current voting age. JFCY has the expertise, experience and infrastructure to support the active participation of young litigants, and to work with other community partners / youth supporting agencies on activities beyond the litigation. JFCY has been retained, jointly with the Asper Centre, by a group of individual young people to represent them.
26. Additionally, in August and September of 2020, in collaboration with the CCRC and the Asper Centre, JFCY wrote to the Prime Minister, the Attorney General of Canada, and the leaders of three other national political parties and the Bloc Quebecois to advance the proposition that the voting age should be lowered to include young people under age 18. JFCY's Executive Director has also joined an international colloquium of lawyers and academics studying and exploring the international perspectives and experiences of access to the franchise for people under age 18.

Other Activities

a) Continuing professional development

27. Every year, JFCY staff lawyers speak at countless engagements to educate young people about their rights at all school levels, colleges and universities, and also at a wide variety of youth-serving organizations, including community centres, group homes, and other institutional settings.
28. JFCY provides training to professionals and other frontline service providers regarding both the rights of young people and the obligations of adults working with youth in a variety of legal areas. In all such training, JFCY strives to advance rights-respecting models of working with and on behalf of young people. This includes appreciating their unique vulnerabilities and circumstances, and focusing on a strengths-based approach promoting dignity and human rights, including *Charter* rights and those enshrined in international human rights instruments.
29. JFCY has chaired and presented at numerous continuing professional development events for members of the bar on issues including rights issues as related to the *Charter* and the *UNCRC*, human rights, privacy, education, youth criminal justice, health and mental health, health, child protection, certain family law matters, child and youth victimization, and the unique obligations, responsibilities and challenges of representing children and youth. These include events offered by various professional associations, including the Law Society of Ontario, the Ontario Bar Association (“OBA”), the Canadian Bar Association (“CBA”), and other professional and academic conferences at universities in Ontario and across Canada.
30. The following paragraphs provide a non-exhaustive list of some of JFCY’s more recent professional development, presentations, community development activities, publications and public legal education activities.
31. JFCY lawyers are active on numerous professional and community-based organizations. JFCY lawyers are on the executives of the OBA Child and Youth Law section, the Civil

Liberties, Constitutional and Human Rights Law section, the Education Law section and the Access to Justice Committee. JFCY's Executive Director ("ED") is the current chair of the CBA Child and Youth Law Section, and is a Board member of A Way Home Canada. A JFCY lawyer is a Board member of the Canadian Association for the Practical Study of Law in Education (CAPSLE). A JFCY lawyer has been a long-time member of the Child Rights Academic Network.

32. JFCY was a founding member of the CCRC in 1989, which was established to inform the Canadian public about the *UNCRC* and provide a forum for civil society participation in its implementation. A JFCY staff lawyer acted as a special advisor for several years, and a staff lawyer has been on the CCRC Board since 2006.
33. As recognized experts in child and youth rights, JFCY lawyers are members of and active participants in community organizations, consultations, and committees etc., to ensure that a youth rights-based perspective is brought to the table, and to promote the direct involvement of young people with lived experience relevant to the concerns at issue. Some current examples include: Covenant House's Sex Trafficking Advisory Committee; Yonge Street Mission's Evergreen Mental Health Collaborative Roundtable; the New Toronto Courthouse, Youth Criminal Justice Consultation and Planning Committee; the Provincial Human Services and Justice Coordinating Committee (HSJCC); the Justice Centres project with Ontario's Ministry of the Attorney General; Community and Social Services Engagement Table of Ontario's Minister of the Solicitor General on policing issues; Legal Aid Ontario's Criminal Law Advisory Committee; the Canadian Observatory on Homelessness and the Making the Shift project.
34. Since 2012, JFCY has participated in the annual think-tank hosted by Landon Pearson's Centre of Excellence for Childhood and Children's Rights. The think-tank is attended by members of the Children's Rights Academic Network ("CRAN"), which is composed of academics and professionals working in the field of children's rights. A JFCY lawyer has been a long time member of CRAN.
35. The following paragraphs describe some of our more recent presentations.

36. In April 2020, JFCY's ED spoke at the Law Society of Ontario's CPD program The Six-Minute Criminal Lawyer, presenting on "YCJA Records, What every Criminal Law Practitioner Needs to Know".
37. In May 2019, JFCY's ED spoke at the CBA New Brunswick's annual family law program, making a presentation entitled "Embedding the Rights of the Child in Practice and Legislation"; and two JFCY lawyers delivered a session at the annual national conference of CAPSLE, focusing on the *Charter* and human rights of LGBTQ students.
38. In November 2018, a JFCY lawyer participated in a panel organized by the Family Lawyer's Association entitled "Family Law & Child Protection Issues Relating to Youth" which included discussion on the use of child protection records in YCJA proceedings.
39. In March 2018, JFCY's ED did a presentation at the OBA Institute program entitled "Using the Preamble and the *UNCRC* to Advocate – Putting the New Child, Youth and Family Service Act Into Practice".
40. In February 2018, JFCY's Executive Director was a Plenary speaker at the three-day National Conference "Coming Up Together – Towards Ending and Preventing Youth Homelessness In Ontario, Canada, and Beyond". Her presentation was entitled "Housing as a Human Right".
41. Since 2006, JFCY lawyers have participated and regularly spoken at the biennial Canadian Alliance to End Homelessness Conferences. In 2018, the JFCY lawyer's presentation was entitled "Legal Help and Legal Systems for Homeless Youth with Mental Health Concerns". In 2016, the JFCY lawyer's presentation was entitled "The Human Rights of Homeless Youth".
42. In September 2017, JFCY lawyers facilitated two workshops at a national conference hosted by the Canadian Research Institute for Law and the Family and by the Office of the Child and Youth Advocate Alberta about children who are involved in justice processes. One of the workshops was entitled "The intersection of the *UNCRC*, the *Charter*, and human rights legislation." The workshop involved content directed at taking a rights-based approach to representation of children and ensuring equity for children in a variety of social systems.

43. In June 2017, JFCY's ED spoke at the University of Ottawa's "Realizing Rights: Human Rights and Constitutionalism" conference, where she gave a presentation entitled "Children's Rights are Human Rights, Advocating in and Outside the Courts". She also sat on a panel entitled "Children's Rights: from Aspiration to Realization in Federalist States", presenting about the practical pursuit of child and youth rights in Ontario.
44. In March 2017, JFCY lawyers, in conjunction with the Office of the Child and Youth Advocate Alberta, conducted two days of training for a variety of justice system participants including lawyers, social workers and advocates. The training was about how to take a rights-based approach to advocacy and representation for youth.
45. In February 2017, at the OBA Institute conference JFCY's ED moderated and spoke at a program entitled "Youth and Policing of Public Space"; and chaired a program on the privacy rights of young people across a broad array of legal and non-legal settings including health care, education, child protection, and criminal justice, entitled "Youth Records: What You Need to Know About Access Restrictions and Privacy Challenges".
46. In 2016, JFCY's Executive Director travelled to Malaysia with the CBA and UNICEF Malaysia to provide training and support to Malaysian lawyers who work with young people. Participant lawyers attended both academic sessions and practical workshops regarding the representation of children and the advancement of their human rights in various areas of law, including child welfare and youth criminal justice.
47. In March 2015, a JFCY lawyer facilitated a workshop at an annual provincial conference hosted by the Ontario Association of Children's Aid Societies (OACAS). The workshop focused on privacy rights, participation rights, and consent issues in the health care context related to children and youth.
48. Since 2015, JFCY lawyers have spoken annually on a range of child rights issues at the Université de Moncton's International Summer Course on the Rights of the Child. Workshops and presentations have centred on taking a rights-based approach to the representation of children in a variety of areas of law, and the application of the *UNCRC* in Canadian law.

49. At the American Bar Association's (ABA) conference in Vancouver in 2016 a JFCY lawyer presented with an academic colleague at a session entitled "ABA and Canadian Legal Needs of Homeless Youth Learning Exchange: Improving Outcomes by Removing Legal Barriers". JFCY also presented on the development and implementation of the UN Committee on the Rights of the Child's "General Comment No 21 on Children in Street Situations".
50. In 2009, JFCY co-sponsored and helped to organize a conference entitled "Best Interests of the Child: Meaning and Application in Canada". The other co-sponsors were the CCRC, the Asper Centre, and UNICEF Canada. JFCY lawyers conducted workshops on specific subject area application.

b) Law Reform activities

51. The following paragraphs provide some recent examples of JFCY's law reform activities.
52. In 2021, JFCY provided oral testimony and written submissions to the Standing Committee on Justice Policy of the Ontario Legislature on Bill 251, Combating Human Trafficking Act, 2021, which included amendments to the *Child, Youth and Family Services Act* ("CYFSA") on the provision of services to 16- and 17-year-old victims of sexual exploitation and sex trafficking. JFCY's submissions focused on the impact of these amendments on children's rights, liberty, and security and the experience of children receiving services under the CYFSA, and their corresponding involvement with police. JFCY also made a deputation to the Executive Committee of the City of Toronto Council regarding the impacts of the Bill.
53. Since 2020, JFCY has been an active participant in and regular presenter to the monthly Peer-to-Peer Knowledge Exchange organized by the Office of the Children's Lawyer, which includes children's aid society management and staff, social workers, lawyers, and community support agency staff and has hundreds of participants from across Ontario. The purpose of the exchange is to share information and to educate front-line staff and other professionals working with 16- and 17-year-olds receiving services from children's aid societies. JFCY has contributed presentations on numerous substantive legal areas and the legal rights of children and advocacy issues on behalf of children, as well as commentary

concerning the representation of and provision of services to young people engaged in the child welfare system.

54. In 2019-2020, and 2011, JFCY contributed to the CCRC's submissions to the UN Committee on the Rights of the Child in response to the Committee's periodic review of Canada's compliance with their obligations under the *UNCRC*.
55. In 2019, together with the OBA, JFCY participated in Ontario's Independent Civilian Review into Missing Person Investigations led by the Honourable Gloria Epstein, to provide the perspective of vulnerable children and young people.
56. In 2018, JFCY participated in the Ontario government's consultations on missing persons where the consideration of new legislation and appropriate systems responses was led by the Ministry of the Solicitor General.
57. In 2017, JFCY participated in the Canada Border Services Agency's "Consultation on the National Immigration Detention Framework" and the its "Consultation on Measures under consideration for inclusion in the Immigration and Refugee Protection Regulations with respect to the considerations of the child's best interests for detention decisions".
58. In 2017, JFCY made both oral and written submissions to the Legislative Assembly of Ontario's Standing Committee on Justice Policy regarding Bill 89, a bill focused on overhauling many aspects of the child welfare system in Ontario (ultimately passed as the *Child, Youth and Family Services Act*, 2017). A child rights perspective, including respect for the individual agency of children, a child-centred and child-rights approach played a significant role in the submissions delivered by JFCY, and many of those submissions were ultimately incorporated into the final version of the statute.
59. In 2015 – 2016, JFCY was a participant on the Ontario Ministry of the Attorney General's Roundtable on Mental Health Issues in the Criminal Justice System.
60. In June 2016, JFCY lawyers attended the Spring Consultation held by the Canadian Council of Refugees (CCR) and presented on a panel related to the policies and practices of Canada

Border Services Agency on Canadian and non-Canadian children being held in immigration detention.

61. In June 2018, a JFCY lawyer presented at CCR's International Refugee Rights Conference as part of the Children's Rights panel on the *UNCRC* and the rights of child refugee claimants.
62. In 2016, JFCY made submissions to the Parliamentary Standing Committee on Justice and Human Rights concerning Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying). JFCY's submissions concerned children's capacity for decision-making in the health care context, respect for children's evolving capacities, and the detrimental effect on children's physical and mental health of their discriminatory exclusion from the Bill.
63. Also in 2016, JFCY provided written submissions concerning issues encountered by young people in complaints against the police to the Independent Police Oversight Review, led by the Honourable Justice Michael Tulloch and worked with the Ontario Bar Association to provide further consultation to Justice Tulloch's Independent Street Check Review.
64. In April 2016, JFCY made written submissions to the Standing Committee on Citizenship and Immigration regarding Bill C-6 An Act to Amend the Citizenship Act, regarding the inability of a young person to apply for citizenship in their own right and the lack of clarity related to the consideration of YCJA records and/or charges and the potential violations of the privacy protections afforded by the YCJA.
65. In February 2016, JFCY made written submissions to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Committee on the Rights of the Child (CRC) for their Joint General Comment on the Human Rights of Children in the Context of International Migration.
66. In 2016, JFCY made submissions to the United Nations Committee on the Rights of the Child's "General Comment No. 21 on Children in Street Situations", highlighting the lack of legal services available, the need for greater respect for the human and other rights of children, the prevalence of child-welfare involvement among the population of homeless

youth, and the persistent problems with child protection services, especially for Indigenous and racialized children and youth, that often lead children to leave care.

67. JFCY made submissions at the 2007 General Day of Discussion sponsored by the U.N. Committee on the Rights of the Child on the child's right to participate in decisions affecting them, and in particular judicial and administrative decisions. In 2008, staff members from JFCY presented two papers at the National Child Rights Conference entitled *Barriers to and Models for Child and Youth Participation in Court and Administrative Proceedings* and *Youth Participation in the Education Context*.
68. JFCY was invited by the Standing Senate Committee on Human Rights in 2005 to consult on Canada's international obligations in respect of the rights and freedoms of children.
69. JFCY has for many years been extensively involved in an array of systemic advocacy regarding policing issues, including *Charter* and other rights issues in the context of young people's experiences of policing.

c) Public legal education and publications

70. JFCY produces and publishes a range of public legal education materials that are designed to provide young people and the adults who work with them access to meaningful, relevant, and accessible legal information. Materials are made available on our website through a Legal Rights Wiki, and publications which can be downloaded directly or available in hard copy upon request or distributed at presentations or through partner agencies. JFCY has a social media presence with legal content delivered through YouTube videos, blog posts and active on both Twitter and Instagram.
71. Topics covered include "LGBTQI2S Legal Rights", "Health Care and Mental Health Care", "Age Based Laws", "Corporal Punishment", "Youth Criminal Court Process" "Bail in Youth Criminal Court" as well as "Leaving Home", "Being in the Care of a Children's Aid Society", "Suspensions" and "Expulsions".
72. In 2021, JFCY published a five-part resource entitled "Guide to Special Education in Ontario", The clinic has long published a book called "Know Your Rights: A legal guide to

your rights and responsibilities under the Youth Criminal Justice Act”, and a book called ‘Street Law Smarts’ with 26 legal subjects particularly relevant to young people experiencing homelessness. Also available are “rights cards” that range in topics from tickets, warrants, police encounters, youth records and discipline in schools.

73. JFCY is currently working with a street-youth serving community partner (Covenant House Toronto) and a law firm to create an online interactive resource entitled the “Homeless Youth Handbook”.

74. JFCY works with schools and youth serving community agencies to provide workshops directly to young people and to train front-line staff on legal issues of interest to the young people who use their services. We also work with community partner organizations on specific public legal education and community development projects.

d) Academic research

75. JFCY has engaged with academics doing research on various child and youth rights topics.

76. We have been working on a Critical Legal Geography study with Professor Dr. Alexandra Flynn, University of British Columbia and University of Ottawa, and her colleagues, investigating the way in which property law impacts young people experiencing homelessness and the extent to which there are adequate legal protections for them.

77. We are working with Professor Dr. Carla Cesaroni, and colleagues at Ontario Tech University who are investigating the experience of young people in their interactions with the police, in and outside of the criminal justice context.

78. We are working with Professor Dr. Daniella Bendo, King’s University, and Professor Dr. Christine Goodwin-De Faria, Trent University who are investigating the lived experience of young people with intellectual disabilities in the criminal justice system, and the extent to which their rights are appropriately protected and advanced.

79. We are part of a community consultation group to a project at the Ontario Institute for Studies in Education at the University of Toronto, examining how being without immigration status impacts a student’s educational experiences.

80. We are participating with researchers at the Factor-Inwentash School of Social Work, at the University of Toronto, as part of a group of community consultations on research projects that will look at the experience of people involved in child protection services who also have immigration issues.

D. PUBLIC INTEREST LITIGANT POSITION

81. It is appropriate for JFCY to act as a Public Interest Applicant in this proceeding because of the clinic's unique expertise and perspective on children's rights in the context of a broad range of child and youth rights issues, and in particular relating to the *Charter*, the *UNCRC* and the unique implications of childhood and adolescence in the context of legal rights; based on its history of legal representation and advocacy on behalf of children and young people; because of its engagement on the issue of the minimum voting age in Canada; and because of the challenges faced by young people who might wish to pursue this matter in court but be unable to do so, including because of systemic barriers to access to justice, and to *Charter* litigation in particular, and the possibility that individual applicants will "age out" as the matter is heard by the courts.
82. We believe that the question of the *Charter* and international rights of young people *vis a vis* the minimum voting age is a significant and important issue for all young people, including many who, for reasons well outside their control, would be unable to access the courts to have their rights entitlements adjudicated.
83. As described above, JFCY is engaged with the issues raised in this matter. The clinic has considerable expertise and experience regarding the *Charter* and international rights of children and their participation as individual rights holders with rights to agency and participation as members of the body politic. JFCY has invested considerable time and effort to engage with young people on the issue of the minimum voting age, to secure CCP support for possible litigation, and in consideration of the implications of voting rights realization for young people under the age of 18.

84. JFCY has the financial and logistical means, relevant community connections and involvement, and the necessary expertise and resources to see this litigation through to its conclusion.

85. I make this affidavit in support of JFCY's participation as a public interest litigant and for no other or improper purpose.

**AFFIRMED remotely in accordance
with Ontario Regulation 431/20 under
the *Commissioners for Taking Affidavits*
Act by Anne Irwin in Toronto, Ontario,
before me at the Town of Stouffville, in
the Province of Ontario on this 30th day
of November, 2021.**

}

**Amelia Penney-Crocker, Parker Boot-
Quackenbush, Khadijat Folasayo Dairo,
Catherine He, Tharan D'Silva, Katie Yu, Diego
Christiansen-Barker, Lachlan Brown, Zoey
Ann Purves, Jacob Colatosti, Milan Rozotto-
Lagos, Oswaldo Paz Flores, Lauren Handley
and Justice for Children and Youth**
Applicants

and

**THE ATTORNEY GENERAL IN
RIGHT OF CANADA**

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

AFFIDAVIT OF ANNE IRWIN

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